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In this concluding issue of our 3-part study of crime in America, eight articles examine the efficacy of our methods of punishing criminals and preventing crime. Our introductory author examines the role and effectiveness of the courts, whose objective is "to see that justice is done according to law."

U.S. Courts and Criminal Justice

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The 1967 report of the President's Commission on Law Enforcement and Administration of Justice declared that

> The criminal court is the central, crucial institution in the criminal justice system. . . . It is the institution around which the rest of the system has developed and to which the rest of the system is in large measure responsible.[1]

Courts and judges play many roles in our system of criminal justice. Some roles are obvious and well recognized, while others take place largely out of public view. The objective of judges and courts, of course, is to see that justice is done according to law. For most purposes, the law governing crimes in the United States is statutory law, enacted by the various legislatures. Courts are thus expected to apply laws defining crimes of drunkenness, gambling, auto violations and other more serious offenses, but have little if any voice in determining the nature of the body of laws they must apply.

Courts are provided for in rough outline by constitutional provisions, but their specific organization, their respective jurisdiction (authority to hear and decide cases), their personnel, salaries, administrative support and, in most states, even their procedural rules are determined by the legislature.[2] The courts, then, are dependent on legislatures and chief executives (who must initiate and give political support to legislative proposals) for achieving reforms in the substantive law of crimes, and in court organization, personnel and procedure. Critics of the courts and their methods must take this into account, though they may well conclude that judges have done less than they might to alert the public and the other branches of government to their particular problems and needs.

[1] *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 125. Chapter 5 of the report examines the work of the courts. The entire report is of first importance for anyone who seeks an understanding of our system of criminal justice. Referred to hereafter as *Report of President's Commission* (1967).

[2] An excellent detailed description of the organization and jurisdiction of courts can be found in Lewis Mayers, *The American Legal System* (rev. ed.; New York: Harper and Row, 1964), esp. chs. 1–4, 12, 13. For an analysis of a municipal system see Maxine B. Virtue, *Survey of Metropolitan Courts Detroit Area* (Ann Arbor: University of Michigan Law School, 1950).

We shall try to view the functions of courts within the larger scheme of criminal justice, to avoid the practice of "scapegoating," by which some critics attribute the malfunctioning of our vast and complex system of criminal justice to a single participant—the courts. If blame is to be assigned for the deficiencies of our system, it must be shared, and should include the other agencies of government, and most citizens, including taxpayers who want an effective system but prefer not to pay for it, and all the good people who think that criminal justice is not actually their responsibility.

JURISDICTION OF COURTS

Each of the 50 states, the District of Columbia, and the federal government have separate judicial systems. As a result, there are many variations of organization and procedure throughout the United States, and only a limited number of generalizations can be made about court organization and authority. Each of our court systems (which tend to organize on a geographical basis at the trial level) has a minor judiciary, commonly referred to as the "inferior courts," with limited jurisdiction (authority to issue orders and try cases), and a set of trial courts of general (unlimited) jurisdiction that are responsible for trying serious (felony) cases. It is important to keep in mind the distinctions between these two levels of trial courts, since many of the valid criticisms of the inferior courts tend to carry over in popular thinking to trial courts in general.

INFERIOR COURTS

Whether called justice of the peace courts, magistrate courts, or some other name, the courts of limited jurisdiction play a vital part in our system of criminal justice.[3] In the past, and in many states even today, few judges of these courts have had formal legal training. The trend, however, is toward the replacement of untrained, frequently fee-paid judges by legally-educated, salaried officials, an important step toward more professional and more efficient fulfillment of the important judicial role.

The inferior courts issue warrants for arrest and for searches of property and effects, hold the preliminary hearings in felony cases (where a sentence of imprisonment for one year or more in a state penal institution may be imposed) and are the trial courts that dispose of the great mass of criminal cases, generally those involving a fine and/or a sentence of six months or less in a local or county jail.[4]

On the whole, these courts issue warrants in perfunctory fashion. Extremely few search warrants are ever issued and arrest warrants are rarely needed by the police for felony arrests. Most minor judges profess confidence in the law enforcement officials who request the issuance of a warrant, and rarely challenge their explanation that there is probable cause or reasonable grounds justifying a warrant.

Of perhaps greater significance is the minor judiciary's conduct of preliminary hearings where felony charges are lodged against a defendant. At the preliminary hearing, usually only the state presents evidence, the accused is advised by the court of his right to remain silent, and commonly chooses to do so. The importance of the court's role at the preliminary hearing arises less from occasional decisions that the state has not made out a *prima facie* case, than in the judge's power to give effective advice to the defendant about his rights: to have counsel, to be released on bail, and to communicate with friends and family. When the judge is confronted by a never-ending stream of defendants, he may be tempted to hurry through the preliminary hearing in felony cases, since he is not taking a final action affecting the accused and he assumes that the defendant will receive adequate advice and

[3] *Report of President's Commission* (1967), pp. 128–130.

[4] For a detailed account of procedure in criminal cases see Ernst W. Puttkammer, *Administration of Criminal Law* (Chicago: University of Chicago Press, 1953). Other materials of great value in understanding the complexities of procedure are Monrad G. Paulsen and Sanford H. Kadish, *Criminal Law and Its Processes* (Boston: Little, Brown, 1962), esp. Part IV, and William B. Lockhart, Yale Kamisar and Jesse H. Choper, *Constitutional-Criminal Procedure* (St. Paul: West Publishing Co., 1964).

assistance before his trial takes place.[5] When the states are prepared to implement fully the decisions in *Gideon v. Wainwright*[6] and *Miranda v. Arizona*,[7] which require the assistance of counsel for all defendants early in the proceedings, the adverse effect on a defendant's rights of a perfunctory preliminary hearing will be lessened. But at the present time, in all too many courts, the preliminary hearing hardly serves as a safeguard against improper charges, and frequently leaves a defendant ignorant of his rights.

Perhaps the most serious shortcoming of this procedure at present, and one that is attributable to public and legislative indifference, as well as to casual judicial attitudes, is the unfair operation of the bail system. It is rather ironic that although decisions of the United States Supreme Court have ruled that an indigent defendant must have the assistance of counsel both at trial and on appeal, and is entitled to a free transcript for appeal, a defendant who is unable to post bail must remain in jail awaiting trial. Even if acquitted, he will have been punished by imprisonment and frequently loses his job. Even more serious, his detention in the critical period before trial reduces his chances of helping his defense by interrogation of friendly and hostile witnesses and easier consultation with counsel.

A significant movement to alleviate this condition, organized by the Vera Institute of Justice, has begun programs in various cities in which its investigators obtain relevant information about the defendant on the basis of which a recommendation is made to the court supporting release without bail. Thus far the results have shown that virtually all of those released without bail appear for trial. It has long been urged that a law making failure to appear for trial a separate offense would prove as effective as bail in guaranteeing the appearance of accused persons at the time of trial.

TRIALS IN THE INFERIOR COURTS

In one recent year, there were four million non-parking criminal cases in the municipal and justice courts of California; all except 45,424, representing filings in felony cases, had to be disposed by inferior courts.[8] This presents the problem of what Edward L. Barrett, Jr. has termed "mass production." During 1963, a single judge in the municipal court in San Francisco handled 24,379 drunkenness cases. In Los Angeles, a special court handles 60,000 to 80,000 cases a year.

What are the consequences of this tremendous burden on the inferior courts? A screening by the police and prosecutor has supposedly eliminated those concerning whom there is a substantial doubt as to guilt. Of the great majority of those against whom charges are then filed, the assumption is one of guilt. As a result of a bargaining process in which the prosecutor plays the leading role, with the judge serving as a willing ally, pleas of guilty are entered in 75 per cent to 90 per cent of the cases.[9] To induce these pleas of guilty the state reduces the severity of the charge in the great majority of cases.

If the prosecutor and judge insisted on the initial (and frequently accurate) charge, the number of guilty pleas would decline and the courts would be overwhelmed. Where the defendant pleads guilty the judge asks the defendant if he understands the consequences of his plea, and whether his plea is made freely, but the answers are always affirmative.

In those cases where a not-guilty plea is entered, the trial usually proceeds with great dispatch. Especially when the defendant is without counsel, as is true in the majority of misdemeanor trials, the defendant's case may consist of little more than his protest that he is innocent, and his account of the events surrounding the charge against him. Against

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[5] See Edward L. Barrett, Jr., "Criminal Justice: The Problem of Mass Production," in Harry W. Jones, ed., *The Courts, The Public and the Law Explosion* (Englewood Cliffs, N.J.: Prentice Hall, Spectrum, 1965), ch. 4.

[6] 372 U.S. 335 (1963).

[7] 384 U.S. 436 (1966).

[8] See Barrett, *op. cit.*, for these and other statistics revealing the heavy burden on the lower courts.

[9] See Donald J. Newman, *Conviction: The Determination of Guilt or Innocence Without Trial* (Boston: Little, Brown, 1966) for an excellent study of this process.

this the prosecutor's representative will place the testimony of police officers and others, buttressed by the unspoken assumption that the defendant would not be in court if he were not guilty. The judge may in some cases take an interest in the defendant's case but, typically, the press of time, the weariness of hearing so many similar cases day after day, and his confidence that the prosecutor performs his duties fairly and efficiently weaken any inclination to view a case as deserving of extended treatment.

Perhaps the most important judicial function in misdemeanor trials, on pleas of guilty or not guilty, is the imposition of sentence. There is generally no provision for pre-sentence investigation in misdemeanor trials. Almost universally, a judge is lenient with first offenders, who may be let off with a suspended sentence or a modest fine. Probation, requiring regular reporting to a designated official by the convicted offender, may be imposed as part of a sentence that might have resulted in several months imprisonment. But where the defendant's record shows one or more previous convictions, or charges that did not result in conviction, the judge may give a sentence based on little more than his own rule of thumb. At least that is the impression one gains from hearing "60 days," "90 days" or some other figure given almost automatically to certain classes of second or third offenders.

The overall impression given by the great majority of inferior courts is that they have been forced to confront a mass of cases, some of which—like moving traffic violations, drunkenness, narcotics and gambling—should not be even "court" cases. Poorly qualified and inadequately paid, overworked and conscious of their low status in the judicial system, many inferior court judges use their offices to dispense political favors, occasionally with outright corrupt motives, but, more typically, in an effort to promote their own long-range interests in one of the party organizations of their community.

COURTS OF GENERAL JURISDICTION

In contrast to the inferior courts, the courts of general jurisdiction, which are empowered to hear felony cases, are typically staffed by relatively well-qualified elected or (in a few states) appointed judges. For the most part, while these judges have very substantial schedules, the feeling of intense pressure and the need for taking shortcuts that is characteristic of the inferior courts are missing from their proceedings. Their work involves three classes of cases—those where the defendant pleads guilty, those where the defendant demands trial by jury, and those tried by the judge without jury. The estimate of Kalven and Zeisel is that about 75 per cent of felony cases are resolved by a plea of guilty, 15 per cent are tried with juries, and 10 per cent by the judge alone.[10] There are about 55,000 to 60,000 jury trials annually in the United States and an estimated 100,000 trials in all, with approximately 300,000 pleas of guilty in felony cases.

The plea of guilty procedure, while not prolonged, is more carefully handled in felony cases. Judicial scrutiny has been increasingly close as the result of United States Supreme Court decisions concerning the right to counsel, coerced confessions, and the rights of disadvantaged defendants. The author of a recent major study has concluded that trial judges play too slight a role in the bargaining process that produces pleas of guilt, but the tendency of most judges is increasingly to question the defendant in considerable detail before accepting his plea, conscious of the threat of reversal by the appellate court if the trial judge glosses over irregularities, or acts in a perfunctory manner in accepting the plea.

A defendant elects to be tried by jury when he believes, on advice of counsel, that his chances of acquittal will be increased, and similarly, chooses to be tried by the judge when that will improve his chances. Juries are thought to be tender-minded toward cer-

[10] Harry Kalven, Jr. and Hans Zeisel, *The American Jury* (Boston: Little, Brown, 1966), p. 18. In addition to presenting relatively reliable statistics on trials, a subject replete with problems, this study gives a revealing insight into the thinking of trial judges and the differences between the way they and juries view cases.

tain types of offenders, while a judge is suspected of being less swayed by angry passion in those cases which laymen may find particularly repulsive. A major study by Kalven and Zeisel reveals that a defendant who decides to bring his case before a jury fares better 16 per cent of the time than he would have in a bench trial, which suggests that the instincts of defendants and counsel have on the whole proved sound.

Whether by jury or the judge alone, felony trials are characterized at their best by careful examination and cross examination of witnesses by counsel, an air of decorum in the court, careful rulings by the judge on points of law, and an apparently sincere effort to give the defendant a fair trial. A defendant who has inadequate counsel or who lacks resources for effective pretrial investigation is seriously disadvantaged, and there are cases where a publicity-seeking district attorney or a high-powered defense counsel may convert a serious search for truth into a dramatic but unwarranted "fight" to win conviction or acquittal.

Trials by jury are conducted with greater formality, because of the desire to keep improper evidence from the jury, and it is at jury trials that counsel are likely to indulge in the more flamboyant techniques of the trial bar. The typical felony trial in the United States, however, comes far closer to an ideal system for determining guilt or innocence than does the misdemeanor trial, whose many deficiencies have been described above.

In felony cases where the defendant is found guilty, some form of pre-sentencing investigation will normally take place. In some states a rather careful effort is made to shape the sentence to fit the specific offender. Probation may be granted when the defendant's chances of rehabilitation are enhanced by remaining free but required to observe certain conditions and to report regularly to a probation officer. Any serious violation of probation conditions will cause the court to insist that the original sentence be served.

There is one other aspect of the sentencing process that deserves notice—the apparent wide disparity between the sentencing patterns of various judges.[11] Special conferences and institutes have been held in some states and federal circuits, but too little attention has been given to this problem. When men who have committed the same crime and have essentially similar backgrounds and characteristics are given markedly different punishment, one of them is certain to feel that he has been unjustly treated.

APPELLATE COURTS

Appellate courts perform several important functions in our system of criminal law.[12] In directly reviewing the judgments of the trial courts of general jurisdiction, both in felony cases and in misdemeanor cases brought to them on appeal from inferior courts, or, when so provided by statute, on direct appeal from an inferior court, an appellate court examines the trial record to determine whether a constitutional or statutory right of the defendant has been violated, or if the trial court has committed a legal error to the prejudice of the defendant. Except in Connecticut, appeals may be taken only by a *convicted* defendant. A trial court error that helps produce an acquittal must remain uncorrected, because of the interpretation by the courts of the double jeopardy provisions of the United States and virtually all state constitutions. Only if the evidence supporting

(*Continued on page 114*)

[11] See *Report of President's Commission* (1967), pp. 141–146.

[12] See Delmar Karlen, *Appelate Courts in the United States and England* (New York: New York University Press, 1963) and Puttkammer, *op. cit.*, chs. XIV–XVI.

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This specialist notes that "A contact with the juvenile court not only is unlikely to assist a youngster to become a better citizen but, according to respectable theory today, the contact is likely to lead him into further delinquency."

The Role of Juvenile Courts

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Near the turn of the century, the juvenile court was created by men and women possessed of a passion for social justice. The concerned citizens who secured the passage of juvenile court acts in almost every state within a few years after the landmark Illinois Act of 1899 were aroused by the causes of women's rights, prison reform, the plight of the immigrant poor and the need for protecting children. The reformers were optimists. They saw the social order as basically good, but believed that it ought to be brought up to date with some of its cruelty removed. Women should have the vote; prisoners should be taught a trade; immigrants should be afforded equal opportunity; and wayward youth should be saved.

A child in trouble was not likely to be saved in 1899. If he were over seven, he could be convicted of a crime. After conviction, he would find himself branded for life as a criminal; he might be placed with the general prison population in an institution designed for hardened criminals. In part, the juvenile court movement was a reaction to this harsh and cruel system of cutting off a life's potential before the life had truly begun.

In part, the reformers were skeptical about the entire process of criminal justice. Obviously, the system of conviction, punishment and release had not restricted crime. If anything, it made men worse. It embraced in its operation nothing designed to lift men up or to help them with their difficulties. Certainly this arrangement, based on uncertain theories of deterrence, in turn founded on a medieval conception of free will, would not, in the reformers' eyes, be appropriate for the twentieth century.

The new court was to emphasize correctional change in the individual child. The source of each young offender's forbidden deeds was to be discovered and eliminated by treatment. Medical attention was to be given to those whose misbehavior resulted from physical ills. Psychiatric or psychological techniques were to be applied to the mentally disturbed. Special teaching would overcome behavior problems rooted in miseducation. A probation officer's guidance and counsel would strengthen the youth's own resources.

Indeed, the court was often compared to a clinic or a school. The reformers had a firm and naïve belief that there was a body of science—medical, social and psychological—which could work beneficial changes in troubled children if only the law would open the door to its application. As Chicago's Judge Julian Mack wrote in 1908,

> The problem for determination by the judge is not has this boy or girl committed a specific wrong, but what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.[1]

The child should be changed and restored, not branded and lost.

The juvenile court was to be staffed by

[1] Julian Mack, "The Juvenile Court," 23 Harv. L. Rev. 119 (1909).

expert, specialized judges knowledgeable in the behavioral sciences and filled with love for children, by probation officers with extensive training and light caseloads, by medical and psychological personnel who were to provide the needed auxiliary services.

The specialized court was to employ a flexible procedure geared to the individual case. Nothing should remind a respondent youngster of a criminal court—not a jury, not robes, nor formal courtroom trappings. The rules of evidence which excluded much relevant information only made more difficult the task of getting to the bottom of things. Lawyers would not be needed because the court would not employ an adversary procedure. The aim of the process was to help the youngster. Lawyers would only introduce a useless element of conflict. The trial hearing was perceived as a part of the treatment process.

> Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing some of his judicial dignity, will gain immensely in the effectiveness of his work.[2]

The words are again those of Judge Mack.

How could such a court meet the standards of American constitutions, asked the skeptics. After all, a youngster could lose his liberty by procedures far too streamlined to pass muster in the criminal courts. The juvenile court, asserted its supporters, was a civil, not a criminal, court. It employed chancery doctrines, particularly the concept *parens patriae*—the idea that the state is the ultimate parent of all and would act in the child's interest. Constitutional guarantees, in short, were traded for rehabilitation, education and salvation.

THE REALITY

These rosy dreams have turned to troubled sleep. A few months ago, a 15-year-old boy in Wisconsin killed his mother with a rifle shot. A delinquency petition was filed, and the young man's lawyer moved to dismiss it on the ground that the youth was insane at the time of the shooting. The corporation counsel, seeking to sustain the petition, urged the court to make an adjudication of delinquency even though the boy's mental state would have provided him with a defense in a criminal trial.

If the question is not "what has the boy done" but "what is the child, how he has become what he is and how can we help him," the corporation counsel should have prevailed. Clearly, the boy performed the act. Thus we ought simply ask what he needs for his rehabilitation. But the Wisconsin Supreme Court saw more to the problem.

> Retribution in practice, plays a role in the function of the juvenile court. The judgment of juvenile courts do serve as deterrents. . . . [T]he adjudication of delinquency carries with it a social stigma. This court can take judicial notice that in common parlance "juvenile delinquent" is a term of opprobrium and it is not society's accolade bestowed on the successfully rehabilitated.[3]

"Delinquency" was invented as a soft substitute for the word "crime"; now it is a cruel term itself. Why?

The dreams were inflated dreams—cut off from the hard realities of the world. Cities, counties and states have never been willing or able to provide the juvenile court with the resources which its theory required. Few judges have reached the level of performance which the reformers expected. Probation staffs have been inadequately trained and have been given such large numbers to supervise that nothing but the most perfunctory attention can be given most cases. Most courts do not have access either to adequate auxiliary services or to a wide range of institutions for the help of the adjudicated delinquent. The situation in rural America is accurately described by the title of an article about farm counties, "Most Courts Have to be Substandard."

Would the problem of today's juvenile court disappear suddenly if immense new resources were to be made available? No, I think not.

The dream was based too much on man's capacity to effect correctional change. Within any group of teenagers there are a number

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[2] *Ibid.*, at 120.

[3] *In re Winburn*, 145 N.W. 2d 178, 182–183 (Wisc. 1966).

of dangerously antisocial persons who present a great threat to the community and about whose rehabilitation no one has a firm idea. A youth can inflict a grievous injury which cannot go unremarked, and yet the tools are not at hand "to save him from a downward career." In such cases, juvenile court adjudication is employed to repress rather than to reeducate. The desire to save has outrun the possibility of doing so.

The aspirations of the reformers may, in fact, have been turned upside down. Contact with the juvenile court not only is unlikely to assist a youngster to become a better citizen but, according to respectable theory today, the contact is likely to lead him into further delinquency. The "saving" institution may be a corrupter of youth. A recent publication of the Russell Sage Foundation puts the matter this way:

> If the labeling hypothesis is correct, official intervention may further define the youth as delinquent in the eyes of neighbors, family members, and peers, thus making it more difficult for him to resume conventional activities.[4]

The reformers thought of most criminal procedure as the product of a dark age—technical, impeding the discovery of truth, useful only to pettifogging lawyers. Little by little we have learned that informality can become the curtain behind which error, weariness, indifferences, unseemly hate and prejudice can operate. The misuse of power by juvenile court judges in the South, uninhibited by statutory or constitutional norms, has been documented by the Civil Rights Commission. A trickle of appellate cases further suggests that injustice flowing from an abundance of discretionary power is not confined to any specific region in this country.

The stance of the reformers no longer fits the 1960's. Listen to Judge Mack again.

> Most of the children who come before the court are, naturally, the children of the poor. In many cases the parents are foreigners, frequently unable to speak English, and without an understanding of American methods and views. What they need . . . is kindly assistance. . . .[5]

Is this the way we see delinquency, the delinquent, and the remedy for the problem? True, the customer in the juvenile court, especially in the city, is apt to be poor. His parents may not be foreigners and may speak English reasonably well; he is often a Negro. The problems of the slum-bred delinquent will not yield to an offer of "kindly assistance."

The reformers formulated an institution for a fraternal community in which substantially all persons were either members or pledges. Their institution was not built to address itself to the divisions and complexities that characterize the urban centers of 1967.

THE LEGISLATURES' ROLE

In recent years, three of the country's most populous states have recast their juvenile court laws. In each case, more formality has been introduced into the court process and additional legislative limitations have been placed on the juvenile court judge's discretionary power.

In 1960, the California Governor's Committee on Juvenile Justice recommended that a legislative distinction be drawn between neglected and delinquent children—a distinction not made before 1960 in California because the state had responded to juvenile court theory: treatment should be given according to a juvenile's needs, not according to his deeds.

> We are aware [the committee wrote] that the public primarily identifies juvenile courts with delinquency and consequently assumes that all juvenile court wards are delinquents. In our view, this attaches an unwarranted stigma to a very large proportion of children who have been made juvenile court wards solely because of parental neglect or abandonment.[6]

The committee also recommended that a juvenile and his parents be given the right to counsel and that, if they are indigent and desire a lawyer, a court-appointed attorney be furnished. Due process, the committee's

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[4] Stanton Wheeler and Leonard S. Cottrell, *Juvenile Delinquency: Its Prevention and Control* (New York: Russell Sage Foundation, 1966), p. 23.
[5] Mack, *op cit., supra* n. 1 at 116–117.
[6] Governor's Special Study Commission on Juvenile Justice, Part I (California, 1960), p. 19.

report argues, requires counsel in every legal proceeding which may drastically affect any person, including a person of tender years.

The committee further insisted that juvenile hearings be split into two distinct phases —one to determine the facts and the other to determine what treatment should be adopted. Informality had proved to be an obstacle to justice. The factual basis on which the court's power rests, the report found, "is sometimes decided on issues that evolve from a social investigation even though the jurisdictional facts have not been clearly substantiated." The report called for a more precise enunciation of procedural norms which should be used throughout the state. The California legislature has enacted legislation consistent with the recommendation of the committee.

The New York Family Court Act of 1962 pushed matters even further in the direction of greater formality. Not only was the split hearing adopted but an effective way of securing the right to counsel was established. A system of state-financed "Law Guardians" was set up to serve as counsel for minors unable to pay for representation. Law Guardians, who are employees of the Legal Aid Society, supported by state funds, now represent about 85 per cent of all youngsters charged on delinquency petitions in New York City. A respondent child was also given the right to remain silent at the juvenile court hearing. The legislature placed limits upon the time permitted for pretrial detention and required that placement and probation orders be subject to periodic review. The Illinois Juvenile Court Act of 1965 also follows the trend: split hearings, provision for counsel, a great attention to procedural detail—including a provision that no respondent shall be adjudicated on the basis of his uncorroborated extrajudicial confession.

All in all the legislation in California, New York, and Illinois represents a sharp turning away from the structure the reformers foresaw.

THE COURTS

Although juvenile courts in the United States have existed under that name since 1899, the constitutionality of the procedures employed in them was not tested under the due process clause by the Supreme Court of the United States until May, 1967, although 35 or 40 state supreme courts had addressed themselves to the constitutional issue and had upheld them against the principal challenges. Most of the opinions echoed sentiments similar to those found in a classic Pennsylvania case, *Commonwealth v. Fisher:*

> The natural parent needs no process to temporarily deprive his child of his liberty by confining it in his home, to save it and to shield it from the consequences of persistence in a career of waywardness; nor is the state, when compelled, as parens patriae, to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts . . . the court determines the [child's] salvation, and not its punishment.[7]

In March, 1966, the Supreme Court did decide an important juvenile court case coming from the District of Columbia, *Kent v. United States.*[8] Because the case arose in the District, the Supreme Court was able to avoid a wide-ranging decision of constitutional dimensions by interpreting the relevant federal statutes applicable to the District. Mr. Justice Abe Fortas, writing for the Court, said he was reading the statute in "the context of constitutional principles related to due process and the assistance of counsel." The issue in *Kent* was whether the respondent youngster had been denied the effective assistance of counsel. In broad language foreshadowing its historic 1967 decision, *In the Matter of Gault,*[9] the *Kent* opinion gave an affirmative answer:

> There is no place in our system of law for reading a result of such tremendous consequences without ceremony, without hearing, without effective assistance of counsel, without a statement of reasons.

Kent signaled a skepticism about the work

[7] *Commonwealth v. Fisher,* 213 Pa. 48, 53 (1905).

[8] 383 U.S. 541 (1966).

[9] No. 116, October Term, 1966, decided by the Supreme Court of the United States, May 15, 1967. For excerpts from this decision, see p. 112 of this issue.

of the juvenile court, a skepticism which lies at the base of the *Gault* opinion. In the words of the Supreme Court in the *Kent* case:

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a parens patriae capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[10]

In its landmark decision of 1967, *In the Matter of Gault,* the Court worked a revolutionary change in the law applicable to erring children by establishing that all "fact-finding" hearings in juvenile courts (*i.e.,* hearings in which it is determined what the respondent has done) "must measure up to the essentials of due process and fair treatment." The decision is built upon the premise that the juvenile court system has failed to provide the care and treatment which the theory underlying it had posited. The language of uplift has masked an ugly reality. "Training" schools are often nothing more than prisons for the young and children may be incarcerated there by proceedings containing none of the safeguards provided for adult offenders. "So wide a gulf between the State's treatment of the adult and of the child," the opinion states (again Mr. Justice Fortas), "requires a bridge sturdier than mere verbiage and reasons more persuasive than clichés. . . ."

"The essentials of due process and fair treatment" include, in the Court's eyes, the giving of adequate and timely notice of the petition so the youngster and his parents have the opportunity to respond. Further, in proceedings "which may result in commitment" the child is entitled to be represented by counsel and, if the parents are unable to afford a lawyer, the state must provide one. Due process, we learn, requires that the "constitutional privilege against self incrimination is applicable in the case of juveniles as it is with respect to adults." Lacking a valid confession, a determination of delinquency cannot be sustained "in the absence of sworn testimony subjected to the opportunity for cross-examination."

Mr. Justice Potter Stewart's lone dissenting opinion is based essentially on the view that procedural formalism will "invite a long step backwards into the Nineteenth Century," impeding the work of juvenile courts. The majority disagreed and insisted that more formal procedure will not require states "to abandon or displace any of the substantial benefits of the juvenile process." Indeed "the essentials of due process may be "[an] impressive and . . . therapeutic attitude so far as the juvenile is concerned."

Gault leaves a host of questions unanswered. Are the rules about interrogating adult suspects applicable to children? Is the decision to be applied to youngsters now in training schools? If so, a large number of young, disturbed children will find their way home. What does "due process" require at a dispositional hearing (one in which the treatment of an adjudicated delinquent is determined)?

Must proceedings in a fact-finding hearing be recorded in some way so that an effective appeal may be taken? How can a child waive his right to counsel?

In sum, the impact of the case is to insist that the relatively formal procedural framework of California, New York and Illinois must be the model for the whole nation. And indeed, even the legislation in those states may be constitutionally faulty.

THE PRESIDENT'S COMMISSION

Like the *Gault* case, the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice breaks sharply with traditional theory regarding the juvenile court. The reformers emphasized

[10] 383 U.S. at 555–56.

the role of the juvenile court as one of providing help to children. A leading commentator, Mr. Herbert Lou, writing in 1927, said that youngsters were brought to court so that:

> The handicapped children of the community who come before it may be adjusted, protected, corrected, and developed into useful members of society.[11]

In contrast, the report of the President's Commission affirms that "delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of action by any judge, probation officer, correctional counsellor or psychiatrist." The chief weapons in the fight against delinquency ought to be social and economic means rather than methods of effecting change in individuals. The report urges improvement in schools, in housing, in employment opportunities, in occupational training programs, and the strengthening of the family.

The formal juvenile court system and its pronouncements of delinquency, the report said, "should be used only as a last resort." The report is impressed with studies indicating that the court is a corrupter of youth. The draftsmen of the report recommend that children be kept away from the juvenile court's formal adjudication in as many cases as possible. The report recommends the establishment of Youth Services Bureaus located in neighborhood community centers which would be required to receive both delinquent and nondelinquent children referred by police, parents, schools and other agencies. Each bureau would embrace a broad range of services designed to assist young people in their problems.

It is further recommended that juvenile courts should make the fullest feasible use of "preliminary conferences" to allow for out-of-court adjustments and settlements at the level of court intake. A further device to avoid adjudication is contained in the suggestion that juvenile courts should employ consent decrees wherever possible in the hope that the agreements to undertake rehabilitative treatment might free the respondent from the stigma of adjudication and at the same time make certain that an erring youth who needs it will undertake a treatment plan. For those cases which must come to court, the report urges the introduction of procedures which will guarantee a fair hearing for finding the facts regarding the child's acts as well as a just process for determining questions of disposition. In particular, the commission urges that lawyers be provided for juveniles. "It is essential," the report states, "that counsel be appointed by the juvenile court for those who are unable to provide their own."[12]

The legislatures, the Supreme Court and the President's Commission all point to a juvenile court quite different from that proposed by the reformers. The new court is to be a court of last resort, not a gateway to rehabilitation and reeducation. It is seen as a court very much like other courts, differing principally in its great emphasis upon (but not exclusive concern with) the rehabilitation of children. The new court, however, will be challenged by the same old pressing problem: What can government actually do to help youthful offenders and to reduce the incidence of juvenile crime? Improved procedures may correct abuses but surely they cannot provide new opportunities.

Monrad Paulsen has held a scholarly interest in juvenile court matters for over a decade. He is the coeditor of a new book for law students, *Cases and Materials Relating to Juvenile Courts* (New York: Foundation Press, 1967). In June, 1967, he was the keynote speaker at the annual meeting of the National Council of Juvenile Court Judges. His best known monograph is *Fairness to the Juvenile Offender,* published in Volume 41 of the Minnesota Law Review 547 (1957).

[11] Herbert Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927), p. 219.

[12] *The Challenge of Crime in a Free Society,* Report of the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: U.S. Government Printing Office, 1967), p. 86.

Commenting on why it has taken the United States so long to apply "the privilege against self-incrimination and the right to counsel to the proceedings in the stationhouse as well as to those in the courtroom"—as the Supreme Court did in Miranda v. Arizona*—this author notes that, "To a large extent this is so because here, as elsewhere, there has been a wide gap between the principles to which we aspire and the practices we actually employ."*

The Citizen on Trial: The New Confession Rules

By Yale Kamisar
Professor of Law, University of Michigan

For the professional and amateur students of criminal justice in the United States June 13, 1966, was D-Day. On that occasion, the Supreme Court handed down its long-awaited decision in the landmark confession case of *Miranda v. Arizona,*[1] finally applying the privilege against self-incrimination and the right to counsel to the proceedings in the stationhouse as well as to those in the courtroom. The traditional and often elusive "voluntariness" test for the admissibility of confessions was displaced by a set of relatively specific, "automatic" guidelines. Thereafter, for any resulting confession to be used in a criminal prosecution, police interrogators were required to issue a four-fold warning to persons in custody, advising them that: 1) they had a right to remain silent, 2) anything they did say could be used against them, 3) they had a right to have an attorney present during the questioning, and 4) if they could not afford a lawyer one would be provided free.

In what may prove to be an extremely important part of the opinion, the High Court warned law enforcement officials that if they continue to question a person without the presence of an attorney and a statement is taken, a "heavy burden" rests on them to demonstrate that the defendant knowingly and intelligently waived his rights; regardless of the police version of how they elicited the incriminating statement, "lengthy interrogation" or "incommunicado incarceration" before a statement is obtained is "strong evidence" that the defendant did not waive his rights.

Miranda soon became one of the most publicized and debated cases of our time. Handed down when we were experiencing a "crime crisis"[2]—a crisis to which, many suspected, the Supreme Court had contributed heavily—the new confession ruling evoked much anger and spread much sorrow among bench and bar and the general public, to say nothing of the already harassed and embittered police, a goodly number of whom once again announced they "might as well close up shop."

One week later, and almost unnoticed in the hue and cry, the Supreme Court decided another case, one which has not received

[1] 384 U.S. 436 (1966). For excerpts from this decision, see *Current History,* June, 1967, p. 359.

[2] See this author's "On the Tactics of Police-Prosecution Oriented Critics of the Courts," *Cornell Law Quarterly,* Vol. 49 (1964), p. 436; and "When the Cops Were Not 'Handcuffed,'" *The New York Times Magazine,* November 7, 1965, p. 34.

anything like the attention it deserves: *Davis v. North Carolina*.[3] Since Davis was attacking a 1959 murder conviction by seeking a writ of habeas corpus and since the new confession standards were not to be given "retroactive" effect (the Supreme Court had made it clear that the new test would not be applied to cases whose trials had commenced before the new rules had been promulgated), the admissibility of Davis' confessions was governed by the traditional "voluntariness" test. Thus, the appropriate inquiry was not whether Davis had been adequately advised of his rights before confession but rather whether (taking into account the "totality of the circumstances") his confessions had been made "freely" and "voluntarily" or had been the product of an "overborne will."

DAVIS V. NORTH CAROLINA

That the *Davis* case has been largely overlooked is regrettable, for the history of the case dramatically shows the ineffectiveness and unworkability of the traditional "voluntariness" test—whose passing from the scene four members of the High Court and many lawyers and laymen continue to lament.

As to the particulars of the case, Davis had a third or fourth grade education and a level of intelligence so low that it prompted one of the lower courts, even while affirming his conviction, to raise the moral question whether a person of his mentality should ever be executed. His first contact with the police occurred as a small child when his mother murdered his father and his long criminal record began with a prison sentence at the age of 15. A used-up, impoverished Negro, charged with the rape-murder of a white woman while a fugitive from a state prison camp, Davis' predicament was as unenviable as his sorry background. Having lost most of life's battles, he figured to lose life itself.

Nevertheless, Davis was more fortunate than most alleged victims of impermissible police interrogation tactics. At least he could point to a specific notation on the arrest sheet which read: "Do not allow anyone to see Davis. Or allow him to use the telephone." Rarely, if ever, do police officials make a written declaration, as they did in this case, of a design to hold a suspect *incommunicado*. Moreover, Davis could also point to the uncontested fact that no one other than the police had seen or spoken to him during the *sixteen days* of detention and interrogation in an "overnight jail" which preceded his confessions.

Helpful though these "objective facts" were, however, they did not suffice to invalidate the confessions in the trial and appellate courts of North Carolina in the years 1959 and 1960. Nor did these facts, a year later, impress the federal district judge, who first denied Davis a hearing on his "coerced confession" claim, and then, when reversed on this point and forced to conduct a hearing on the issue, found Davis' confessions to have been "voluntary." Nor, in the year 1964, were these facts quite enough for the United States Fourth Circuit Court of Appeals, which upheld denial of habeas corpus, albeit by a 3–2 vote.

The readiness with which the state and lower federal courts accepted dubious police claims, and the looseness with which they stated (or, more accurately, failed to state) "the facts," is hardly calculated to inspire confidence in the workability and effectiveness of the test—at least from the defendant's point of view. In affirming Davis' conviction, a unanimous Supreme Court of North Carolina observed:

> [T]he prisoner was advised he need not make a statement; that if he did it might be used against him. . . . The prisoner asked to see his sister, whom the officers searched for, after some difficulty found, and delivered the prisoner's message. She appeared at the jail and Captain McCall admitted her to a private conference with the prisoner.

As it happened, the prisoner's sister *was* admitted to a private conference with him, but not, the state court neglected to point out, until he had already confessed, after having been interrogated "forty-five minutes or an hour or maybe a little more" (according to one of the officers) each day for 16 days.

[3] 384 U.S. 505 (1966).

Similarly, the state court failed to note that there was no indication in the record that the prisoner was advised of his rights until the sixteenth day—*after* he had confessed orally but just before he had signed the written confession.

After holding its 1963 habeas corpus hearing, the federal district court had little difficulty concluding "from the totality of circumstances in this case that the confession was the product of a rational intellect and a free will." How did it deal with the telltale notation on the police blotter directing that Davis be held *incommunicado? It made no reference whatever* to this incongruous item in its five-page opinion, four of which were devoted to the "historical facts."

"The notation on the arrest record creates suspicions," conceded the 3–2 majority of the Fourth Circuit in its 1964 opinion:

> but such suspicions cannot overcome the positive evidence that the notation had no practical effect or influence upon what was done and that help rather than hindrance was offered to [Davis] in his one effort to contact someone outside the prison walls.

This, of course, was the police version. The Fourth Circuit opinion pointed out elsewhere that Davis' sister had testified at the habeas corpus hearing that "she twice went to see her brother in the Charlotte City Jail, but each time was turned away." The district court, however, "did not believe her, finding, as the officers testified, that neither she nor anyone else was turned away."

What, if anything, does the foregoing discussion prove? True, seven years after his conviction, the United States Supreme Court did finally invalidate the confessions by a 7–2 vote (Justices Tom C. Clark and John Marshall Harlan dissenting). But it should not be forgotten that in the 30 years since *Brown v. Mississippi*,[4] the first fourteenth amendment due-process confession case decided by the highest court of the land, the Supreme Court has taken an average of only one state confession case every year. How fared the many defendants over these years who did not have the benefit of a powerful and coherent dissenting opinion? How fared the many defendants whose cases did not receive the meticulous attention each Supreme Court justice gives "death penalty" cases marked in red, as was Davis' case and *two-thirds* of the confession cases the Court has chosen to review these past 30 years?

RIGHTS AND THE COURTS

Analyzing a recent Supreme Court term, E. Barrett Prettyman, Jr., a Washington, D.C., attorney who is a careful student of the High Court's work, reported that the Court was asked to review over 2,000 cases, of which 42 involved the death penalty. Although "all of the allegations in these capital cases were so serious that the Supreme Court might have felt compelled to decide each and every one of them" only one condemned man out of four received a hearing, and only one out of eight obtained a reversal.[5] How many garden-variety criminal defendants who cried "coerced confession" but lost the "swearing contest" below could survive the difficult winnowing process above? As Justice Hugo Black put it in the *Miranda* oral arguments, "if you are going to determine it [the admissibility of the confession] each time on the circumstances . . . [if] this Court will take them one by one . . . it is more than we are capable of doing."[6]

Whether or not it is more than the judges in the "front lines" are capable of doing, it seems to be more than very many of them were ready and willing to do. The defendant who was in fact beaten, threatened, tricked or cajoled into confessing faced such enormous, almost insurmountable, problems of proof that the safeguards provided by the old "totality of circumstances-voluntariness" test were largely illusory. When, as was almost invariably the case, the police and the defendant presented sharply conflicting versions of what happened behind the closed doors and when there were no means of independently verifying either version, trial

[4] 297 U.S. 278 (1936).

[5] See E. Barrett Prettyman, Jr., *Death and the Supreme Court* (New York: Harcourt, Brace & World, 1961), pp. 297–98.

[6] From an unofficial transcript of oral argument in *Miranda* and companion cases, p. 91, on file in the University of Michigan Law Library.

judges were under heavy pressure to accept the police account.

As police interrogators abandoned physical violence and made greater use of "psychological" techniques over the years, the problems of proof became increasingly arduous. Disputes over whether physical violence occurred are not always easy to resolve, but evidence of "mental" or "psychological" coercion is especially elusive. Not infrequently, the defendant is quite inarticulate, which aggravates the difficulties of recreating the tenor and atmosphere of the police questioning.

A short week after Justice Harlan manifested a sanguine attitude about the "workability" and "effectiveness" of the traditional "voluntariness" test (in his dissenting opinion in *Miranda*) he and Justice Clark would have applied the old test to sustain Davis' confessions. "The sporadic interrogation of Davis," as they saw it,

> can hardly be denominated as sustained or overbearing pressure. From the record it appears that he was simply questioned for about an hour each day [for sixteen days] by a couple of detectives.

"Disagreement," said Justice Harlan of the "voluntariness" test in his *Miranda* dissent, "is usually confined to that borderland of close cases where it matters least." After three decades and 30-odd "coerced" confession cases which saw the overall gauge steadily changing, usually in the direction of restricting police interrogation methods, was *Davis* still a "close case?" If so, was the need to scrap the "voluntariness" test still a close question?

The question has been asked in many quarters: If the privilege against self-incrimination and the right to counsel really mean as much as the Supreme Court now says they do, why did they mean so little all these years?

For many decades, the "legal mind"—unhappily displaying a "trained incapacity" (to use Thorstein Veblen's phrase) to see the problem in the round—was equal to the task of seeming to reconcile the grim proceedings in the stationhouse with the lofty principles in the Constitution: police interrogration—indeed, the "third degree"—did not violate the Constitution because the questioning did not involve any kind of judicial process for the taking of testimony. The argument ran that, because police officers have no legal authority to compel statements of any kind, there is no legal obligation to answer to which the privilege against self-incrimination can apply; hence, the police can elicit statements from suspects who are *likely to assume or be led to believe* that there *are* legal (or extra-legal) sanctions for stubbornness.[7]

Of course the view that police interrogation was neither limited nor affected by the privilege against self-incrimination or the right to counsel had a great deal more to commend it than merely the inherent force of its "logic" or the self-restraint and tenderness of the exempted class of interrogators. It must have had, in order for it to have been taken seriously for so long.

SOCIETY'S ROLE

Among the forces at work was one of society's most effective analgesics—"necessity," real or apparent. Its influence may be seen in numerous opinions. Although Justice Robert H. Jackson recognized, in his much-quoted concurring opinion in the 1949 *Watts* case,[8] that "if the State may . . . interrogate without counsel, there is no denying the fact that it largely negates the benefits of the constitutional guaranty," he was willing to let this "negation" occur, for otherwise

> the people of this country must discipline themselves to seeing their police stand by helplessly while those suspected of murder prowl about unmolested.

Again, the first axiom of Justice Felix Frankfurter's dissertation on police interrogation and confessions in the 1961 *Culombe* case[9] is: "Questioning suspects is indispensable in law

[7] See the discussion and authorities collected in Yale Kamisar, Fred E. Inbau and Thurman Arnold, *Criminal Justice in Our Time* (Charlottesville: University Press of Virginia, 1965), pp. 21–25, 31–33.

[8] Watts v. Indiana, 338 U.S. 49 (1949), at 59–62.

[9] Culombe v. Connecticut, 367 U.S. 568 (1961), at 578.

enforcement." "Questioning," as Justice Frankfurther and many others used the term, is a euphemistic "shorthand" for questioning *without* advising the suspect of his rights or permitting defense counsel, friends or relatives to be present.

As Justice Arthur J. Goldberg observed in the *Escobedo* case,[10] the police interrogation practices which have prevailed in this country until very recently were based in large measure on

> the *fear* that if an accused is permitted to consult with a lawyer, he will become aware of and exercise, these rights.
>
> * * *
>
> If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement [Justice Goldberg commented further], then there is something very wrong with that system.

The lack of confidence in and impatience with the principles we profess—when the chips are really down—was noted by Justice Frankfurter in another context, that of "trial by newspaper—and TV." Dissenting from the Court's opinion sustaining a conviction for the sexual molestation-murder of a little girl, despite sensational pretrial press coverage of the event, Justice Frankfurter protested:

> Such passion as the newspapers stirred in this case can be explained (apart from mere commercial exploitation of revolting crime) only as want of confidence in the orderly course of justice. To allow such use of the press by the prosecution as the California court [and the United States Supreme Court] here left undisciplined, implies either that the ascertainment of guilt cannot be left to the established processes of law or impatience with those calmer aspects of the judicial process which may not satisfy the natural, primitive, popular revulsion against horrible crime but do vindicate the sober second thoughts of a community.[11]

It now appears that the "necessity" for interrogating suspects without advising them of their rights was considerably exaggerated. For example, after surveying more than 1,000 post-*Miranda* cases, in fully half of which the defendant had made an incriminating statement, Evelle Younger, Los Angeles district attorney, concluded:

> Large or small, . . . conscience usually or at least often, drives a guilty person to confess. If an individual wants to confess, a warning from a police officer, acting as required by recent decisions, is not likely to discourage him.[12]

Other significant factors operating over many decades to freeze the status quo were the invisibility of the stationhouse proceedings —no other case comes to mind in which an administrative official is permitted the same broad discretionary power assumed by the police interrogators, together with the power to prevent objective recordation of the facts— and *the failure* of influential groups to identify with those segments of our society which furnish most of the raw material for the criminal process. As Thurman Arnold, a former federal judge and a former United States assistant attorney general, once pointed out, too many people are roused by any "violation of the symbol of a ceremonial trial," but "left unmoved by an ordinary nonceremonial injustice."[13] And as Professor Herbert Packer of the Stanford Law School recently observed:

> One of the most powerful features of the Due Process Model is that it thrives on visibility. People are willing to be complacent about what goes on in the criminal process as long as they are not too often or too explicitly reminded of the gory details.[14]

Society, one might add, does not *want* to be reminded, does not "want to know about criminals, but it does want them put away, and it is incurious how this can be done provided it is done."[15] It stings now to say it,

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[10] 378 U.S. 478 (1964), at 490.

[11] Stroble v. California, 343 U.S. 181 (1952), at 201–02.

[12] Office of the District Attorney of Los Angeles County, *Results of Survey Regarding the Effects of the Dorado and Miranda Decisions Upon the Prosecution of Felony Cases* (August 4, 1966), p. 4, copy on file in the University of Michigan Law Library.

[13] Thurman Arnold, *The Symbols of Government* (Harbinger ed.; New York: Harcourt, Brace & World, 1962), p. 142.

[14] Herbert Packer, "Two Models of the Criminal Process," *University of Pennsylvania Law Review*, Vol. 113 (1964), p. 64.

[15] Colin MacInnes, "The Criminal Society," in *The Police and the Public* (London: William Heinemann Ltd., 1962), p. 101.

for we are too close to it, but in the first two-thirds of the twentieth century too many people, good people, viewed the typical police suspect and his interrogator as garbage and garbage collector, respectively. (This is every bit as unfortunate for the officer as it is for the suspect.)

Moreover, with the inadvertent exception of those who wrote the interrogation manuals—each manual very likely equal to a dozen law review articles in its impact on the Court (the majority opinion in *Miranda* devotes six full pages to extracts from various police manuals and texts spelling out techniques for depriving the suspect of every psychological advantage, keeping him "off balance," exploiting his fear and insecurity, and tricking or cajoling him out of exercising his rights)—most law enforcement agency members and their spokesmen did their best to *keep* society comfortable and blissfully ignorant. Not too surprisingly, they were much more interested in "sanitizing" the proceedings in the interrogation room than in disseminating the life-size details. As long ago as 1910 (when, everybody *now* agrees, things were in a terrible state), the president of the International Association of Chiefs of Police assured us:[16]

> Volunteer confessions and admissions made after a prisoner has been cautioned that what he states may be used against him, are all there is to the so-called "Third Degree."

As recently as July, 1966, the veteran special agent of the Kansas Bureau of Investigation, Alvin A. Dewey, of *In Cold Blood*[17] fame, testified before the Senate subcommittee on constitutional amendments:[18]

> What is wrong with an officer exercising persistence or showing confidence? Isn't that what any good salesman demonstrates in selling insurance or a car? And a law enforcement officer should be a good salesman in selling a suspect on telling the truth, proving his innocence or guilt. But a salesman cannot do his job if a competitor is standing by, and that is the situation for the law enforcement officer with the presence of an attorney while interrogating a suspect.
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> * * *
>
> As to the description of an interrogation room, I wish to define it as a room where people can talk in privacy which is nothing more than an attorney desires in talking to his client or a doctor in talking to his patient. . . . [These rooms] bear no resemblance to torture chambers as some may wish to think, and in fact some are equipped with air conditioning, carpeting, and upholstered furniture.

PERSISTENT ROOTS

What I have suggested so far does not fully account for the persistence of the de facto inquisitorial system. In the late 1920's and early 1930's, complacency about the system was shaken—at least for a while—by several notorious cases, and by the shocking disclosures of the Wickersham Commission's report on "lawlessness in law enforcement."[19] Still the system survived. Why? Probably because, in addition to the factors already mentioned, the practice had become so widespread and entrenched that even most of its critics despaired of completely uprooting it in the foreseeable future. A broad, fundamental attack on the system might well have failed completely; elimination of the more aggra-

(*Continued on page 114*)

Yale Kamisar is the author of numerous law journal articles on the constitutional dimensions of criminal procedure and is coauthor of *Criminal Justice in Our Time* (Charlottesville: University Press of Virginia, 1965) (with Fred E. Inbau and Thurman Arnold); *Modern Criminal Procedure: Cases, Comments and Questions* (2d ed.; St. Paul: West Publishing Co., 1966) (with Livingston Hall); and *Constitutional Law: Cases, Comments and Questions* (2d ed.; St. Paul: West Publishing Co., 1967) (with William B. Lockhart and Jesse H. Choper).

[16] Major Richard Sylvester's comments are reported in John Larson, "Present Police and Legal Methods for the Determination of the Innocence or Guilt of the Suspect," *Journal of Criminal Law and Criminology*, Vol. 16 (1925), pp. 222–25.

[17] See Truman Capote, *In Cold Blood* (New York: Random House, 1966).

[18] Statement of Alvin A. Dewey before the subcommittee on constitutional amendments of the Senate Committee on the Judiciary, July 21, 1966, p. 2 (mimeographed), on file in the University of Michigan Law Library.

[19] National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* (Washington: U.S. Government Printing Office, 1931), generally referred to as the *Wickersham Report*.

Statistical evidence tends to show "not that capital punishment is no deterrent, but that there is no evidence that capital punishment is a deterrent superior to imprisonment."

The Issue of Capital Punishment

By Hugo Adam Bedau
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In February, 1967, the President's Commission on Law Enforcement and Administration of Justice published its report, *The Challenge of Crime in a Free Society*. Supported by a third of a million words and dozens of graphs and tables, the commission advanced more than 200 specific recommendations touching every aspect of crime and criminal justice in the country. Many readers of the report will be shocked to discover that the perennial problem of capital punishment has been disposed of in barely one page! The commission's solitary recommendation could hardly have been briefer:

> The question whether capital punishment is an appropriate sanction is a policy decision to be made by each State. Where it is retained, the type of offenses for which it is available should be strictly limited, and the law should be enforced in an evenhanded and nondiscriminatory manner, with procedures for review of death sentences that are fair and expeditious. When a State finds that it cannot administer the penalty in such a manner, or that the death penalty is being imposed but not carried into effect, the penalty should be abandoned.[1]

There is some irony in the disproportionate public attention lavished upon the crime of murder and the issue of capital punishment (widely dramatized recently in the best-selling "non-fiction novel" by Truman Capote, *In Cold Blood*) and the near dismissal of the entire subject in the commission's report. Yet this relative neglect of a major social issue by the most distinguished group of public servants ever assembled under a mandate to scrutinize crime and punishment in America is not really surprising, provided one is aware of the relevant facts over the past several decades. All one must do is review the practice of capital punishment in terms of the volume of capitally punishable crimes, the annual number of executions, the trends toward final disposition of death sentences and toward abolition of death penalties, and the attitudes of the public and responsible spokesmen.[2] Once these facts are grasped, the position of the commission and the familiar arguments for and against abolition can be viewed in a somewhat more intelligible light.

CAPITAL CRIMES

Murder, first of all, is by no means the only capital crime: treason, rape, kidnapping (with or without ransom), robbery, burglary, carnal knowledge, perjury in a capital case, and some two dozen other crimes (against property, the person, the state) are all punishable by death somewhere in the United States. Few, however, carry a mandatory death penalty; nowhere today are either murder or rape, for instance, punishable by death except at the discretion of the court. Nor are all kinds and degrees of murder subject to the death penalty. Whatever may once have

[1] The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 143.

[2] I have drawn heavily in the following paragraphs upon information in Chapter 2 of my book, *The Death Penalty in America* (New York: Doubleday Anchor, 1964), rev. ed., 1967.

been meant by the Biblical injunction, "an eye for an eye, a tooth for a tooth, . . . a life for a life," (*Exodus* XXI: 23–24), today at most it is first degree ("wilful, deliberate and premeditated") murder that carries the death penalty.

How frequently do capital crimes occur? Whatever may be true of the rate and volume of crime generally, "crime and arrest data . . . indicate no substantial increase in aggressive crimes during recent years."[3] This judgment is borne out by the statistics on "murder and nonnegligent manslaughter" as released by the FBI in its annual *Uniform Crime Reports* (see Table I). No annual criminal statistics are reported on kidnappings; this itself is a measure of how infrequently this crime occurs. The annual statistics on rape show essentially the same trend as murder, namely, a fairly constant rate. In sum, crimes of personal violence (for which the death penalty is most typically imposed and thought to be justified) are moderate in volume for a population of nearly 200 million, and show no marked tendency to increase at present.

A reasonable estimate of the legal executions carried out in the United States since 1900 would put the total somewhere over 7,000. The greatest number in any one year —199—occurred in 1935.[4] These 199 are a typical sample of the total execution population. All but a few (3) were *male* (of the 3,857 persons executed since 1930, only 32 have been female). Most (119) were *white*, though the number of nonwhites (mainly Negroes) executed far exceeds the white/nonwhite ratio in the general population (exactly half of all executions between 1930 and 1966 have been of Negroes). The vast majority (184) were for the crime of *murder;* most of the rest (13) were for rape (since 1930, executions have actually been carried out only for seven crimes: murder, rape, armed robbery, kidnapping, burglary, espionage and aggravated assault).

Last year, however, only *one* person was executed, by far the smallest figure in our history. Although all except six states have executed at least one criminal since 1930, the sharp decline (especially since 1960) in total executions and in the number of jurisdictions carrying out executions, is evident (see Table II).

However, in every year, the courts hand down far more death sentences than the prisons carry out. In the current decade, this gap has grown to disturbing proportions (see Table III). These figures show that the trial

TABLE I: MURDER IN THE UNITED STATES

Year	Number of Murders	Rate per 100,000 of Pop.
1960	9,140	5.1
1961	8,600	4.7
1962	8,400	4.5
1963	8,500	4.5
1964	9,250	4.8
1965	9,850	5.1

Source: Uniform Crime Reports, 1960–1965.

TABLE II: EXECUTIONS IN THE U. S.

Year	Total Executions	Total Executing Jurisdictions
1960	56	20
1961	42	18
1962	47	18
1963	21	13
1964	15	8
1965	7	4
1966	1	1

Source: National Prisoner Statistics, Executions 1930–1966.

TABLE III: DEATH SENTENCES, U. S.

Year	Total Death Sentences Issued	Total Persons Under Death Sentence at End of Year
1960	113	189
1961	136	212
1962	99	273
1963	91	275
1964	98	300
1965	67	333
1966	113	405

Source: National Prisoner Statistics, Executions 1930–1966.

[3] R. H. Beattie and J. P. Kennedy, "Aggressive Crime," *The Annals,* March, 1966, p. 84.

[4] See "Executions 1930–1965," *National Prisoner Statistics,* No. 39, June, 1966.

courts have by no means ceased to hand down death sentences, and that with the decline in executions, the total number of persons under sentence of death has steadily mounted. Over the same period, the median time endured by those under sentence of death has stretched from roughly 17 months to nearly *four years!* The explanation for this increasing delay is the development of postconviction remedies—thanks to the Supreme Court—which permit (some would say "encourage") appeal of felony convictions, particularly under habeas corpus proceedings. Lawyers across the nation, spurred by concern over civil liberties and civil rights, have managed to delay if not defeat almost every death sentence where they have made such an effort. As the President's Commission understandably put it, "All the members of the Commission agree that the present situation in the administration of the death penalty in many States is intolerable . . ."[5] Yet nothing in sight, short of outright abolition itself, promises to relieve this expensive and interminable process of appellate litigation.

ABOLITION OF THE DEATH PENALTY

The laws of the several dozen United States jurisdictions competent to impose the punishment of death—the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the federal government under civil law (extending to territorial, maritime, and interstate matters) and military law—have been so changeable that at no time in the past century (nor at present) have all these jurisdictions ever imposed the death penalty for a given crime (much less actually carried out an execution) in any given year. As early as 1794, Pennsylvania limited the death penalty to first degree murder. In 1846, the Territory of Michigan became the first English-speaking sovereignty to abolish the death penalty for murder. To date, nearly half the states of the union have experimented with abolition of the death penalty (see Table IV).

Much of the recent strength of the abolition movement stems from the decisive repeal of all death penalties in Oregon by public referendum in November, 1964, by a vote of 455,654 to 302,105. Within six months, Vermont, Iowa, West Virginia and—most significantly—New York also abolished it for first degree murder (though with some exceptions; see the notes to Table IV). This brings to 13 the number of states nominally at present without the death penalty, the greatest number and regional distribution of abolition jurisdictions at any one time in our history. Today, more Americans live without the threat (or protection) of capital punishment than ever before.

PUBLIC OPINION

In the 30 years between the first Gallup Poll on capital punishment of April, 1936, and the most recent Harris Survey of July, 1966, public approval of the death penalty has dwindled from 62 per cent to 38 per cent, whereas abolition sentiment has grown from 33 per cent to 47 per cent. In the intervening years, other polls taken by the Gallup and the Roper organizations record considerable fluctuation; but they are consistent with the overall impression that the nation has changed within a generation from overwhelming support for the death penalty to a near majority in opposition to it. How stable this majority will prove to be, or how large and how rapidly it will grow, remains to be seen. But there is no doubt, if we may trust the polls, that the days of easy public acquiescence to capital punishment are over.

At the same time, several groups with a national constituency have taken public stands in favor of abolition. Most of the major Protestant denominations (Episcopal, Methodist, Congregational, Lutheran, Presbyterian, American Baptist) have been on record against the death penalty for several years. So have the Conference of American Rabbis and prominent Roman Catholic spokesmen, such as Richard Cardinal Cushing, of Boston. Until recently, the major civil liberties, civil rights and correctional organizations refused to take such a stand. Within the past two years, however, the American

[5] *Supra,* note 1, p. 143.

TABLE IV: ABOLITION OF DEATH PENALTIES IN U. S.

Jurisdiction	Date of Abolition	Date of Restoration	Date of Reabolition
Michigan	1846[a]	——	——
Rhode Island	1852[b]	——	——
Wisconsin	1853	——	——
Iowa	1872	1878	1965
Maine	1876[c]	1883	1887
Colorado	1897	1901	——
Kansas	1907[d]	1935	——
Minnesota	1911	——	——
Washington	1913	1919	——
Oregon	1914	1920	1964
North Dakota	1915[e]	——	——
South Dakota	1915	1917	——
Tennessee	1915[f]	1917	——
Arizona	1916	1918	——
Missouri	1917	1919	——
Puerto Rico	1917	1919	1929
Alaska	1957	——	——
Hawaii	1957	——	——
Virgin Islands	1957	——	——
Delaware	1958	1961	——
West Virginia	1965	——	——
Vermont	1965[g]	——	——
New York	1965[h]	——	——

Source: Bedau, *op. cit.* (1967), p. 12.
[a] Death penalty retained for treason until 1963.
[b] Death penalty restored in 1882 for any life term convict who commits murder.
[c] In 1837 a law was passed to provide that no condemned person could be executed until one year after his sentencing and then only upon a warrant from the governor.
[d] In 1872 a law was passed similar to the 1837 Maine statute (see note c above).
[e] Death penalty retained for murder by a prisoner serving a life term for murder.
[f] Death penalty retained for rape.
[g] Death penalty retained for murder of a policeman or guard or by a prisoner guilty of a prior murder, kidnapping for ransom, killing (or destruction of property) by a group during wartime.
[h] Death penalty retained for murder of a police officer on duty, or of anyone by a prisoner under life sentence.

Civil Liberties Union, the N.A.A.C.P.'s Legal Defense Fund, the National Council on Crime and Delinquency, and the American Correctional Association have publicly joined forces with the abolition movement, which has been led for 40 years by the American League to Abolish Capital Punishment.

No less noteworthy has been the shift in public posture within the Department of Justice in Washington. For many years, the most outspoken defender of capital punishment in the country has been Director of the FBI J. Edgar Hoover; his views on the subject have often been released to law enforcement personnel through official FBI publications.[6]

But two years ago, in a letter to Congress, Ramsey Clark (now attorney general), wrote:

> We favor the abolition of the death penalty. Modern penology, with its correctional and rehabilitative skills, affords greater protection to society than the death penalty, which is inconsistent with its goals.[7]

He reiterated these views at his first official press conference in March, 1967. Such sentiments, expressed by a government official so close to the White House, indicate clearly the changing climate of American opinion.

[6] These statements have been collected and reprinted in Bedau, *op. cit.*, pp. 130–135.

[7] Quoted in a speech by Senator Philip Hart, July 25, 1966, as printed in *The Congressional Record*, p. 16181.

ARGUMENTS PRO AND CON

Arguments over the death penalty are legion; a recent tabulation listed no less than 65 for and 87 against capital punishment![8] Despite their variety, they fall into two groups: those based essentially on empirical, utilitarian or pragmatic considerations; and those reflecting essentially religious or moral convictions.

Among the arguments of the latter sort are these: the death penalty is the only punishment proportionate to the gravity of the offense; the death penalty is the only punishment whereby the murderer can expiate his crime; the death penalty is more humane than life imprisonment; in capital punishment the state indulges the very lust for vengeance it denies to its citizens; capital punishment violates the sanctity of human life; life imprisonment is more humane than capital punishment; and so on. Clearly, neither abolitionist nor retentionist has any monopoly on these non-empirical arguments.

But the questions which have drawn the most controversy are whether capital punishment can be equitably administered, whether it is an effective deterrent, and whether there is any viable alternative. These arguments raise issues to which evidence is directly relevant, even if it is not wholly conclusive.

It has been argued (with considerable force, as shown above) that nonwhites bear a disproportionate share of all death penalties, and that capital punishment shows the effects of racial discrimination at every point. Two recent studies are specially pertinent here. One shows that the vagaries of appellate review of death sentences in Virginia have led to 56 executions there for rape; in every case the convict was nonwhite.[9] Another study shows that the absence of any standards to guide the trial jury in its deliberations over the sentence of a person found guilty of first degree murder in New Jersey tends to allow racial prejudice to tip the scales against the Negro offender.[10] These are only indications of what fuller studies would probably reveal.

Apart from the way capital punishment works unfairness toward nonwhites, there is the ever-present danger of executing an innocent man. A tally in 1962 of all known cases where miscarriage of justice in murder cases had been alleged show that they occurred at about the rate of one per year.[11] True, very few involved the actual execution of a demonstrably innocent person. But there were two dozen cases where the death sentence was averted and where the innocence of the convict was established beyond doubt.

Those in favor of the death penalty will, of course, argue that the risk of executing an innocent person is overestimated, and that such risk must be accepted if society is to have the fullest protection of the criminal law. Abolitionists will reply that unless some deterrent benefit from capital punishment can be clearly shown, there is no justification for risking an irreversible mistake.

But by far the greatest objection to the death penalty in terms of its inequities is simply this: given the fact that each year roughly 10,000 murders are committed, is there any reason to believe that the 100 or so sentenced to death and the handful finally executed were those who committed the most vicious crimes, were the most depraved and beyond rehabilitation, and had the benefit of counsel as skillful as the great majority who are never sentenced to death at all? Abolitionist sentiment questions such comforting assumptions.

Although the President's Crime Commission Report (as quoted earlier) is not

[8] Canadian Ministry of Justice, *Capital Punishment* (Ottawa: 1965), pp. 22–35. This is the most recent public document on capital punishment, and is especially valuable for its summaries of other such documents not readily available. See also Joyce Vialet, "Capital Punishment: Pro and Con Arguments," U.S. Library of Congress Legislative Reference Service, August 3, 1966 (mimeo).

[9] Donald H. Partington, "The Incidence of the Death Penalty for Rape in Virginia," *Washington and Lee Law Review,* Spring, 1965, pp. 43–75. A very elaborate study of this issue, sponsored by the N.A.A.C.P. Legal Defense Fund, has yet to be published; see the preliminary reports in *The New York Times,* April 24, 1966, and November 30, 1966.

[10] Edwin D. Wolf, "Analysis of Jury Sentencing in Capital Cases: New Jersey 1937–1961," *Rutgers Law Review,* Fall, 1964, pp. 56–64.

[11] See Bedau, *op. cit.,* pp. 434–452, for a full account of each case.

squarely in favor of abolition, it is unambiguous in its appraisal of the evidence over the crucial issue of deterrence.

> It is impossible to say with certainty whether capital punishment significantly reduces the incidence of heinous crimes. The most complete study on the subject, based on a comparison of homicide rates in capital and non-capital jurisdictions, concluded that there is no discernible correlation between the availability of the death penalty and the homicide rate. This study also revealed that there was no significant difference between the two kinds of States in the safety of policemen. Another study of 27 states indicated that the availability of the death sentence had no effect on the rate of assaults and murders of prison guards.[12]

The results summarized here have been widely discussed wherever the death penalty has been seriously examined. They derive from the statistical tabulations drawn up by Professor Thorsten Sellin and his associates at the University of Pennsylvania a decade or so ago, and have been frequently reprinted and are readily available.[13] In each case, Sellin's evidence tends to show not that capital punishment is no deterrent, but that there is no evidence that capital punishment is a deterrent superior to imprisonment.

Since all the statistical data essentially reinforces this point, abolitionists are understandably confused by the undiminished confidence with which many retentionists cling to the doctrine of the unique deterrent efficacy of the death penalty. For instance, the Report of the New Jersey Commission to Study Capital Punishment stated, in support of its recommendation not to abolish the death penalty, that "those most intimately concerned with law enforcement gave evidence and their conclusion is that capital punishment is a deterrent in some cases."[14] Such a statement blurs the distinction between (a) whether the death penalty is or is not a deterrent, and (b) whether it is a more effective deterrent than the alternative of imprisonment. Moreover, the judgment quoted above rests essentially not on statistical but on anecdotal evidence, and there are anecdotes to the contrary as well: they are in the nature of the case inconclusive. It is safe to say that the vast majority of those who have studied Sellin's data concerning the alleged deterrent efficacy of capital punishment have rendered a Scotch verdict: "Not Proven."

Whereas many Americans are apprehensive lest the rehabilitative ideal in penology turn our prisons into country clubs, most Europeans are aghast at the Draconian punishments commonly inflicted under our statutes. European penologists have long been adjusted to the idea that no class of offender should be permanently barred from the possibility of eventual release; and that, moreover, prison terms should be as short as possible (for the crime of murder, very often no more than five to ten years).[15]

Yet one of the major obstacles to abolition of the death penalty has been the question: whether murderers can be safely imprisoned and eventually released without again preying upon the public. Actually, murderers probably have less tendency to repeat their crime (either inside prison or outside, after release) than any other class of offender. A study of some 1,158 released and paroled murderers in eight states (California, Connecticut, Maryland, Massachusetts, Michigan, New York, Ohio, Rhode Island) over the past several

(*Continued on page 116*)

[12] *Supra,* Note 1, p. 143. This Commission is often referred to as the President's Crime Commission.

[13] Thorsten Sellin, *The Death Penalty* (Philadelphia: American Law Institute 1959); "Capital Punishment," *Federal Probation,* September, 1961, pp. 3–11; these and other studies on deterrence are also reprinted in chapter 6 of Bedau, *op. cit.*

[14] New Jersey Commission to Study Capital Punishment, *Report,* October, 1964, p. 9.

[15] See Giles Playfair and Derrick Sington, *The Offenders* (New York: Simon and Schuster, 1957).

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"What prison reform must now accomplish," according to this noted penologist, "is the task of requiring the prison official to manage his institution dynamically." As he sees the problem, "Through research and through trial and error, correctional administrators will find the proper uses of incarceration in the continuity of correctional services."

Prisons and Prison Reform

By John P. Conrad
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Out of sight for most law-abiding Americans, about 200,000 men and women are in prison on any given day in 358 state prisons. The cost is considerable. The consolidated operating budgets for all these state correctional facilities amount to about $385 million. Depending on the region of the country, the annual maintenance cost per inmate ranges from about $1,300 in the South to $2,650 in the Northeast.[1]

About 80,000 new inmates are received every year. They remain for periods varying from less than six months to life terms. The average for the country as a whole is about two years, but the wide variation in the laws and the paroling policies applying to release make an average meaningless. About 60,000 inmates are released annually on parole. An unknown number of others, probably about 20,000, are turned loose without supervision. For the last ten years, prison populations have been slowly rising. The total population in 1955 was 165,692. In 1961, the total was 196,453, and in 1966 it was 201,220.

To guard, feed and rehabilitate this turbulent mass of humanity, the states employ about 46,000 people, of which more than 30,000 are uniformed guards. The management of prison systems is a complex and wide-ranging administrative responsibility in some large states; in one state there are 6,700 employees with a budget of $62 million. In the smallest states, staffs reckoned in the dozens manage with budgets of less than half a million dollars.

The picture is not complete without a reference to our jails, where society's less troublesome criminals are kept. The country maintains 2,547 county jails in which the average daily population is about 140,000. Inmates confined in these facilities serve terms running from a few days to a year. The total number of people who served terms in American jails during 1966 is estimated at 1,016,748, not counting an unknown number of others awaiting trial. Little is known about jail inmates. We worry so little about our petty offenders that we do not even have a system by which they can be regularly sorted into types and counted. They are fed and housed at niggardly costs. Jail expenditures throughout the nation last year amounted to $147,794,214. This reflects an annual per capita cost of $1,046, and a daily cost of $2.87, little more than half of the comparable costs in state prisons. Hardly anyone worries about whether confinement in jail accomplishes any useful purpose. Almost never is there any speculation as to whether too much or too little is spent on county confinement. Occasional exposés of especially squalid conditions create a public stir, but the costs of change would be great and an easily bored

[1] Data in this article are drawn from *Correction in the United States,* A Survey for the President's Commission on Law Enforcement and Administration of Justice by the National Council on Crime and Delinquency (New York, 1967).

public readily turns to objects of sympathy thought to be more deserving than the drunk, the prostitute, or the petty thief.

CHANGING THE BAD AND THE MAD

Our penal institutions are abiding monuments to Western man's faith in the notion that incarceration can change wrongdoers into citizens. The notion has persisted for over two centuries, but the reasoning by which the conclusion is supported has gone through some radical changes. To understand the present situation of our prisons and the widespread skepticism about their usefulness, we must review the history of the idea of incarceration.

This is not an old idea in its present form. Until the eighteenth century, criminals were locked up for the purpose of retribution, usually as a preliminary to torture and execution. Retribution firmly expressed the community's intolerance of crime and its belief that the criminal was evil. The evil which he did was caused by Satan. To banish or to execute him was an act of social sanitation, preventing him from contaminating others. The cruelty which the courts so often visited on the malefactor demonstrated the state's abhorrence of evil as personified by those who committed crimes.

Primitive theology gave way to rationalism during the Enlightenment. The belief gained ground that criminals, although bad, could be persuaded to become good if the penalties for badness exceeded the pleasures gained from evil-doing. The great colonial nations, especially England and France, banished their wrong-doers to faraway domains of their empires. Other countries, without the advantages of empire, had to banish their criminals to domains less remote but hardly less separate from the world from which they came.

American prisons began to be built in their present form in the late eighteenth century. Many of them survive today. Among the most advanced penal ideologies of the time were those which were propounded in Pennsylvania and New York. A regime of work and silence was imposed on the criminal; the work was solitary in Pennsylvania and communal in New York; but silence was rigorously enforced in the prisons of both states, in which hundreds of involuntary monks performed their enforced penance. From all over the world, penal authorities came to the United States to observe and learn how reason could be made to substitute for cruelty in the regeneration of evil-doers. The most notable of our visitors were Charles Dickens, the English novelist, and Alexis de Tocqueville, the French political philosopher. Their acute observations on American penal practice record both penal theory and its application.[2]

The nineteenth century was an age of optimism and reform. Belief that severity would deter the offender from further crime gave way to the idea that training and education would refit the criminal so that he could live constructively as a citizen. It is not surprising that this idea found one of its earliest expressions in Australia, where the excesses of punishment were least restrained by the government, but also where the need for manpower to develop a new continent was great. There a prison superintendent, one Alexander Maconochie, instituted a series of reforms based on the maxim that "prisoners should be punished for the past but treated for the future." Prisoners were encouraged to learn responsibility through assumption of responsibility for the convict communities in which they lived.[3] This was a brief experiment, more renowned in Europe than in Australia, for it lasted only from 1840 to 1844, when the public outcry against Maconochie's leniency became too much for his superiors to withstand.

But the impact of Maconochie's system reached around the world to Ireland, where a group of imaginative prison officials adapted his ideas into what came to be known as the

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[2] Charles Dickens, *American Notes* (New York: Scribner, 1898), and Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application to France* (Carbondale: Southern Illinois University Press, 1964).

[3] John Vincent Barry, *Alexander Maconochie of Norfolk Island* (Melbourne: Oxford University Press, 1958).

"Irish mark system." Under this regime, prisoners qualified for stages of increased freedom through marks awarded for good conduct. The "Irish mark system" was a humanitarian landmark of the mid-nineteenth century. American prison officials journeyed to Ireland to study it, and presently it became a model for use in New York and other northeastern states. From that time on, in most civilized countries, one of the conditions of confinement has been the expectation that good conduct will be rewarded by time remitted from the sentence. In America, this expectation led to the indeterminate sentence, by which punishment could be individualized so that the prisoner whose good intentions were manifest by good behavior could be released as soon as possible, while his fellow prisoner whose motivations were not so good would be held longer, or even for the rest of his life.

Though the principle is attractive, its application has been difficult. To judge whether a man has committed a crime is one thing, a determination of fact. The legal procedure is well established and the reliability of the system is not in doubt. To predict whether anyone, even a criminal, will commit a crime is quite another problem, and no system has been proposed which improves significantly on chance. Nineteenth century penal administrators tried to deal with the problem by assuming that interest in learning a trade or in various industrial tasks was evidence of good intentions, whereas the malingerer or troublemaker might be counted on to be a bad citizen upon release.

Later, as the influence of the mental health movement gained favor in correctional circles, psychiatric evaluations, sometimes based on treatment, but more often on faith in the clinician's training and experience, were used in the hope that the criminal's future might be more clearly predicted. Perhaps, some believed, the psychiatrist might find ways to influence the future behavior of the criminal as well as to predict it. During the years between the two world wars the influence of psychoanalysis joined with traditional psychiatry in devising theories of behavior to account for criminality. Such terms as *constitutional psychopathic inferiority, psychopathy, sociopathy,* and *primary behavior disorder* gained and lost currency in the effort to anchor criminal behavior to a theory of mental illness or abnormality. Similarly, the concepts of repression and abreaction have been adapted from the psychoanalytic theory of neurosis to account for "acting-out" behavior.

By these rationales, the badness of the criminal has been transformed by some into a sort of madness, which it is the special province of the prison to cure. The prisoner is said to be sick, even though most prisoners stubbornly reject the idea of illness to account for their crimes. Under such a theory, release from prison should occur when the prisoner has sufficiently recovered from his illness to warrant confidence that he can live harmlessly at large in the community.

Unhappily for the theory, its general acceptance has coincided with the application of statistical method to study clinical treatment. The post-release conduct of treated and untreated criminals has been compared under rigorous statistical controls. Nothing has so far been discovered in repeated experiments which justifies the conclusion that psychological treatment of the criminal for his criminality (or his psychopathy, his sociopathy, or his behavior disorder) has any positive effect. The untreated criminal, when released from prison, behaves neither worse nor better than his treated counterpart in the statistical studies which have been attempted so far. Whatever the psychiatrist can do for the criminal, his treatment alone is not enough to make a statistically measurable difference.

Our perception of the criminal has changed. We no longer view him as one who has wilfully chosen to do evil in preference to good. We now see him as one who has been caused by unfavorable circumstance to offend against society. The circumstances which led him to crime might be found within him by the psychologist or around him by the sociologist. Whatever their origin, the belief prevails that both cir-

cumstances and their effects can and should be changed. The thrust of this belief has had a profound effect on prison management and reform. Despite discouraging experience, and all the statistical findings, American prison officials generally believe that their responsibilities include a serious effort to change prisoners for the better.

THE ASEPTIC PRISON

Most prison officials now see that it is unreasonable to expect that any single treatment will accomplish the reform of all their prisoners. An hour a week in a psychiatrist's office, if the psychiatrist can spare so much time for an inmate, can hardly offset the influence of the rest of the week spent in the company of embittered and cynical criminals. Nor can it be realistically expected that education, vocational training or an industrial assignment will suffice for the regeneration sought unless something is done about the prison itself.

Prison officials accept their responsibility for providing for more than the traditional custodial security. Until the present generation of correctional management, the warden's principal concern was to make sure that prisoners lived in peace and order within the prison and did not escape its perimeter. A good warden of this school took pride in the peace and tranquillity which he had attained through wise and equitable administration of his institution's affairs. He could rightly claim that in an institution as large as most American prisons, populated as most American prisons are by violent and aggressive young men, his accomplishment in maintaining security was no mean feat. He would add that he should be judged on this score alone; it was not fair that reformers should inquire what good the security of the prison accomplished as long as the law required that the warden should keep his prisoners safely. It was not relevant to examine the statistics of men returning to prison for evidence as to whether prison accomplished any good. Such data could only reveal the efficacy of treatment programs, or their lack of efficacy.

For the last 10 to 15 years, this position has come under an increasing barrage of criticism. Such students as Clemmer, Sykes, Schrag, Morris and Mathiesen, to name only a few,[4] have pointed to the complexities of the prison community and its adverse influences on the prisoner himself. Goffman has described the prison as one of a type called "total institutions," including such facilities as military barracks, mental hospitals, naval ships and monasteries in which the entire daily lives of the members of the community are limited by the institution itself.[5] Total institutions, in the view of Goffman, are "forcing houses for change," in which all routine is aimed at producing certain kinds of conformity. Unlike other kinds of total institutions, in which management is purposeful in producing members of the community who are good soldiers, sailors, patients or monks, prison management has been indifferent to producing members who are more than tractable inmates. The result has been that prisoners keep order in the interest of reducing the discomfort of imprisonment. A "convict code" results. In such an atmosphere, resistance to the staff becomes an end in itself, and prisoners who cooperate in treatment objectives are ostracized.

Against this resistance, values are capsized. To aspire to rehabilitation is thought to be "square;" to be square is contemptible. The community opposes the objectives of the psychiatrist, the teacher and the chaplain and cooperates with each to the minimum extent possible. Survival of the individual in such a community depends on his acceptance of antisocial values; few prisoners have the moral resources to withstand the pervasive influence of their fellow inmates' solidarity in opposition to staff values.

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[4] See Donald Clemmer, *The Prison Community* (New York: Holt, Rinehart and Winston, 1960); Gresham M. Sykes, *The Society of Captives* (Princeton, N. J.: Princeton University Press, 1958); Clarence Schrag, *Social Types in a Prison Community* (M. A. Thesis: University of Washington, 1944); Terence P. and Pauline Morris, *Pentonville: A Sociological Study of an English Prison* (London: Routledge and Kegan Paul, 1963); and Thomas Mathiesen, *The Defences of the Weak* (London: Tavistock, 1965).

[5] Erving Goffman, *Asylums* (New York: Anchor Books, 1961).

Nevertheless, some headway has been made against the "convict code" and all its implications for failure. Studies have indicated that when staffs have succeeded in obtaining inmates' identification with a socially positive value system it is possible to establish these values as the governing standards of the inmate community. To accomplish this end, a well-trained staff must learn to use group treatment methods aimed at demonstrating that the values of cooperation, goal-oriented effort and mutual aid provide more satisfactions than the exploitative and predatory values of the traditional prison community. The returns are not all in, by any means, nor can it be said that a model for an aseptic prison exists even yet. Still, the objective of current prison reform is clear. It is to arrive at a form of prison management in which prisoners will not harm each other and will try to help each other benefit from the experience in confinement. Florence Nightingale is said to have pronounced the maxim: "Whatever hospitals do, they should not spread disease." Likewise, prisons should not increase crime. They should be socially aseptic.

PRISONS AND THE CRIMINAL CAREER

The United States has led the world in producing the largest and most varied population of criminals ever assembled in one country. Not only is the number large, but its proportion in relation to the total population is larger than any other country. Within the immense variety of American criminality, many different kinds of offender can be distinguished. Some are youngsters out for "kicks," whose antics culminate in unanticipated harm to others or to themselves. Some are troubled souls whose offenses are truly the result of mental aberrations. Some are accidentally in trouble but firmly in allegiance to all the conventional values.

But some are repetitive criminals who see in a life of crime an emancipation from a life of routine and subordination. They are resigned to occasional terms in jail or prison as a price to be paid for a career whose satisfactions still exceed those of menial servitude on a dull job. Seeking action and the chance for big gains, they find that episodes of excitement and power compensate for years of frustration. Such people may be said to be committed to criminal careers in much the same way as a lawyer has a career at the bar or a physician achieves satisfaction in a career in a hospital. For the criminologist, the task is to discover ways of demonstrating conventional satisfactions as appealing as those to be had from the adventures of crime. In an increasingly sedentary and organized America, the task is anything but easy.

One example of this strategy is under way at San Quentin, the largest prison in California. Built in the days of the first pioneers, San Quentin has grown into one of the most famous exemplars of all that is wrong with American prison planning. Housing from 3,500 to 5,000 inmates, many of them in virtually complete idleness, the prison is difficult to control, and chronically seethes with tensions and cross-currents of hostilities between various groups of inmates and between inmates and staff. The feat of managing San Quentin is a precarious victory which must be won again every day.

In 1966, in an imaginative gesture of social invention, the Ford Foundation granted a considerable sum of money to the University of California to experiment with the establishment of a prison college on the San Quentin reservation. University instructors were enlisted to teach conventional undergraduate courses to inmates, who could matriculate as bona fide college students. In the San Quentin population well over 100 were found who could qualify. They were enrolled in a curriculum which included college English, psychology, sociology, accounting and mathematics. Additional courses will be offered as more students qualify. The instructors find their classes challenging and exciting; these students are eager to show that they are as good as their counterparts across the bay in Berkeley.

College courses are not exactly new in prison. For years, prisoners have been taking correspondence courses in college subjects. In many prisons courses have been offered at

the college level for those inmates who had completed all the high school offerings. What is new at San Quentin is the conscious effort to offer in a college curriculum an opportunity for transfer to a new career, a departure from the criminal career to which the individual had been committed. It is hoped that as prison college students discover that they can succeed at the requirements of a demanding college course, they will be emboldened to plan for transfer to a conventional college after their release from prison.

At best, a prison college can absorb only a small fraction of the thousands of sullen and poorly schooled men and women now serving time. But if more can be learned about the process of diverting the criminal careerist to a new career, more experiments can be devised which take advantage of incarceration as an opportunity for resocialization through a new kind of education. The time which a prisoner spends in destructive idleness can become part of a continuity which prepares him for return to a community which needs what he has to offer. The continuity will include not only the long months and years in prison but also the services of parole supervision which can enable him to find the place in society where he is needed rather than a place outside society from which he will have to prey again on the community.

THE CHALLENGE TO CORRECTIONS

Early in 1967, in an epoch-making report, the President's Commission on Law Enforcement and Administration of Justice set forth its findings about the intricate apparatus of justice of which our prisons are an essential part. *The Challenge of Crime in a Free Society* unwaveringly faces the many weaknesses of an archaic system of incarceration, badly understaffed and committed to traditional ideas and practices for which contemporary social science finds little support. The recommendations of the commission accord well with the aspirations of prison reformers since the days of Alexander Maconochie: somehow, the men who come to prison must be prepared for the future. No prison, however generously staffed and equipped, can hope to be anything but a place in which men become worse, unless its objective is the reintegration of its inmates into the community. The prison which merely succeeds in keeping a lid on its unruly guests will spread crime and create worse criminals.

The commission stressed the need for programs which find expression in the community. So far as possible, prisons should be in the community and part of it. Prisoners should have a sense of participation through constructive work and preparation for roles in the community in which they can find fulfilment as citizens. So far as possible, prisoners should not even be in prison. Correctional officials know from long experience and from successful experiments that prison terms are too long. They know that not nearly enough attention is given to probation as a realistic alternative for some who need not come to prison in the first place, or to parole as an alternative to extended and needless months of incarceration. They have pointed to the $400 million spent annually on our prisons and have compared it to the $33 million spent on parole, or the $31 million spent on adult probation. Prison costs will rise and more millions of dollars will be tied up in prison construction unless a vigorous effort is made to strengthen correctional services in the community.

Essentially, the prison reform movement

(*Continued on page 117*)

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As this specialist sees the problem, "there are substantially greater numbers of youths who are committing offenses at an accelerating rate." Nonetheless, ". . . correctional programs continue to wallow in a wilderness of ignorance where precedent, prejudice and hunch are far more influential in shaping program direction and content than is any body of knowledge concerning what works and what does not."

The Community and the Juvenile

By Howard Ohmart
Chief, Correctional Planning and Development, California Youth Authority

The strongest, most affluent and probably most advanced society in human history cannot protect its citizens from the danger of robbery, of rape, of crippling assault, of burglary of residence and theft of property. Many Americans fear for their personal safety. As many as one-third of the citizens are afraid to walk in their own neighborhoods after dark; 50 per cent are afraid in other neighborhoods.[1] In the nation's capital, some apartment complexes employ armed guards with police dogs to provide residents a sense of security. Other apartment buildings are equipped with closed-circuit television to permit continuous surveillance of all building entrances, and "for rent" advertisements compete in the amount and kind of security devices provided.

A national survey indicated that 28 per cent of the respondents kept watch dogs and 37 per cent kept firearms for protection, among other reasons.[2]

Each succeeding release of the FBI's *Uniform Crime Reports* proclaims an increase in both the gross incidence and the rates of crime. Critics of the existing systems for collecting crime statistics point out that better reporting and recording, and increases in the number of police tend to distort the accuracy of the information compiled. But careful analysis of the admittedly incomplete data available leads to the conclusion that crime, and especially youthful crime, has increased significantly; and it will probably increase.

The kind of crime that people fear most, the personal attack, is typically the offense of the youth or young man. Arrests for violent crime occur most frequently among 18- to 20-year-old youths, with the 20- to 24-year-old group following closely. Arrest rates for burglary, larceny and auto theft reach their peak with the 15- to 17-year olds.[3]

Other types of public offenses—fraud, embezzlement, drunkenness and crimes against the family—are most commonly the acts of older people. In their aggregate, they are thought to pose a substantially greater financial burden upon society than are the common crimes of burglary, robbery, and so forth.

However, it is the crime that threatens the person and the security of the home that is most frightening, and it is this type of crime that occasions the greatest public concern. Offenses of this type are a phenomena of youth; and the offense rates per 100,000 of the youthful population are rising.[4]

[1] *The Challenge of Crime in a Free Society,* A Report by the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: U.S. Government Printing Office, 1967), pp. 50–52, (hereafter cited as *President's Report*). This commission is often referred to as the National Crime Commission.

[2] *Ibid.,* pp. 50–55.

[3] Uniform Crime Reports (Washington, D.C.: Federal Bureau of Investigation, 1965), pp. 112–13.

[4] *Ibid.,* pp. 20–21.

When this fact is added to the further important fact that America is about at the point at which a majority of its population will be minors, the potential dimensions of the crime problem begin to emerge; that is, there are substantially greater *numbers* of youths who are committing offenses at an accelerating rate.

Two additional factors are significant. A large, but undetermined, number of criminal acts are perpetrated by repeaters. The President's Commission, after a careful analysis of available data, estimated that only one arrestee in eight was a first offender; or, conversely, seven arrestees out of eight were recidivists.[5] Generally speaking, the offender, juvenile or adult, will engage the correctional system after a first or second arrest. This suggests that a substantial portion of offenses are committed by persons already subject to correctional system control, that is, by probationers or parolees. Hence, to a significant extent the prevention of delinquency and the correction of the delinquent become two aspects of the same process.

Finally, a variety of analyses of delinquent patterns indicate that the younger the offender starts a delinquent career the greater is the likelihood of his recidivation; the later the onset of delinquency, the less the probability of repetition. Prison systems are fed to a significant extent by the failure of the juvenile and misdemeanant correctional processes. In California over 50 per cent of the convicted felons had prior records as juvenile or petty adult offenders.[6]

From this kind of analysis it is logical to conclude that the problem of juvenile and youthful crime is, in fact, the heart and core of the crime problem. Furthermore, the successful effort to correct the adolescent offender can save 40 years of potential law violation. Thus, the correctional dollar successfully invested in the rehabilitation of the youth promises a greater profit than the dollar invested with equal success in the reform of the 35-year-old. The National Crime Commission report implies a similar conclusion in the statement,

> America's best hope for reducing crime is to reduce juvenile delinquency and youth crime. In 1965 a majority of all arrests for major crimes against property were of people under 21 years of age, as were a substantial minority of major crimes against the person. The recidivism rates for young offenders are higher than are those of any other age group. A substantial change in any of these figures would make a substantial change in the total figures for the Nation.[7]

THE CORRECTIONAL PRECEDENT

Traditionally, America, like most of the Western world, might be described as an institution-oriented society. Early in their national history organized communities turned to institutions to handle the problem segments of the population. The orphanage and foundling home offered a means of handling the illegitimate and unwanted child and was widely prevalent well into the present century. With mortality rates sometimes as high as 90 per cent, it provided effectiveness of a sort in the solution of a social problem.[8] The "county poor farm" removed the aged dependent and senile from the public purview, while the early insane asylum contributed more to the deterioration than to the recovery of the psychotic.

Similarly, the prison and the reform school emerged as all-purpose institutions that incapacitated the offender while they punished and rehabilitated simultaneously.

However, with the advent of the New Deal in the 1930's the role of this type of institution was subject to a marked and progressive change. The foundling home has been supplanted by foster homes and adoption procedures that offer infinitely superior alternatives. The "poor farm" was replaced by old-age security programs that permitted many indigent oldsters to remain in the community, while nursing homes cared for the infirm and senile.

The revolution in mental health programs has been much more recent. A combination

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[5] *President's Report,* p. 247.
[6] *California Prisoners 1961–1962–1963* (Sacramento: California Department of Corrections, Research Division, December, 1963), p. 31.
[7] *President's Report,* p. 55.
[8] Arthur J. Pillsbury, *The Institution Life: Its Relation to the State and State Wards* (Sacramento: California State Printing Office, 1906).

of out-patient services, local intensive care units, and chemotherapy is developing as a more effective and less expensive alternative to the large congregate mental hospital, keeping the patient in or near the mainstream of community life and close to the sustaining impact of family and friends.

Only in the correctional field has the institution maintained its significant role as a major treatment-control device.

The National Council on Crime and Delinquency reported that of the nearly 1.3 million adult and juvenile offenders subject to correctional jurisdiction, approximately one-third were incarcerated. In stark contrast, the costs were conversely imbalanced, with annual institutional expenditures aggregating approximately $811 million while the probation and parole function cost some $196 million per year.[9]

Few would question the propriety of such heavy investment in institutions if there were reason to believe that they were effective. The fragmentary and piecemeal data available would indicate that the recidivism rates for imprisoned adults range from 35 to 50 per cent,[10] while the information on juvenile institution parolees suggests repeat rates in excess of 50 per cent. Generally speaking, the better the data, the higher the recidivism indicated. A recent long-term California study revealed that 44 per cent of juvenile institutional parolees were subsequently committed to prison. Additional numbers were involved in petty infractions of the law.[11]

The limited and even more fragmentary data concerning the effectiveness of contemporary probation programs is more encouraging, with some 70 to 75 per cent of the probationers completing their probation period without revocation.

By far the most complete and objective study was made of some 11,000 California offenders granted probation during 1956 through 1958. Of the total, 71.8 per cent were successful in avoiding revocation of probation.[12]

The postwar years have witnessed an increasing disillusionment with the effectiveness of incarceration among correctional theorists and administrators. A growing literature with some research evidence suggests why correctional institutions not only fail to correct the offender but may contribute to an increased commitment to criminality. The view of the reform school as a "school of crime," voiced by criminologists of 30 to 40 years ago, is being replaced with more sophisticated analyses and explanations of the operation of the delinquent culture within the institution setting. The possibility that the delinquent novitiate may learn to pick a lock or "hot-wire" an automobile is far less important than is the risk of his indoctrination into the anti-social, anti-staff, anti-adult delinquent culture which reinforces and confirms his own criminalistic tendencies. Howard Polsky presents a carefully detailed analysis of this phenomenon in an institution that for 50 years has been recognized as one of the nation's best-staffed and best-administered.[13]

CHANGING STYLES AND THEORY

Sociologist Clarence Schrag identifies three "revolutions" in correctional practice.[14] The first revolution was that in which the practices of physical disfigurement, of banishment, and corporal punishment of pre-colonial and colonial times were replaced by the incapacitation of imprisonment and the opportunity thus provided the offender to reflect upon and see the error of his sinful ways. Hard labor was provided to encourage penitence.

The second revolution occurred when re-

[9] *Correction in the United States,* a 1966 survey undertaken for the President's Commission on Law Enforcement and Administration of Justice, used as resource material for the *President's Report.* The full report will soon be released by the National Council on Crime and Delinquency (New York) in its journal *Crime and Delinquency.*

[10] Daniel Glaser, *The Effectiveness of a Prison and Parole System* (New York: Bobbs-Merrill, 1964), pp. 15–26.

[11] Bertram Johnson, *An Analysis of Post-Discharge Criminal Behavior,* Report No. 49 (Sacramento: California Youth Authority, November, 1966).

[12] George F. Davis, "A Study of Adult Probation Violation Rates by Means of the Cohort Approach," *Journal of Criminal Law, Criminology and Police Science,* March, 1964, pp. 70–85.

[13] Howard Polsky, *Cottage Six, The Social System of Delinquent Boys in Residential Treatment* (New York: Russell Sage Foundation, 1962).

[14] Unpublished paper prepared for the President's Commission, 1966.

formers strove to temper the punitive objective of incarceration with the provision of programs that sought to rehabilitate the offender. The delinquent or criminal was viewed as the product of his own emotional, educational and psychological deficiencies. The cure for delinquency and criminality was to be found in the repair of those personal deficiencies. This concept of corrections garnered substantial support from the growth of the juvenile court movement and philosophy of the late nineteenth and the first half of the twentieth centuries.

The rehabilitative revolution probably reached its most advanced point under the influence of the psychiatrists and psychiatric social workers who entered the juvenile correctional field in substantial numbers (particularly in the Eastern and Midwestern states) in the early postwar years. Delinquency and crime were symptoms of a personal maladjustment, or of an inadequate superego. The offender became a patient and the success of correctional programs was thought to lie, in part, in the provision of an adequate number of psychotherapists. Here and there limited demonstration programs were mounted and reported. Rarely was the concept put to adequate test. Those experiments that were designed with appropriate control or comparison groups failed to produce measurable proof of the efficacy of conventional psychotherapeutic methods.[15]

One interesting California experiment indicated that youths adjudged amenable did indeed profit from intensive psychotherapeutic counseling while those classified as nonamenable actually recidivated at a higher rate following treatment.[16]

Concurrent with the promulgation of the psychotherapeutic answer for the correctional problem was a minor and dissenting theme, voiced primarily by the sociologists. These analysts contended that behavior, including delinquent behavior, was the logical product of an interaction between a personality and the total environment; that explanation for the behavior and, hence, means of correcting it, should be sought in the environment of the offender as well as in the personality. Under such a concept, society becomes "the patient" at least as much as does the offending citizen. The organized community must share some of the onus for the incidence of crime and delinquency. The correctional objective becomes less a matter of patching up the holes in the offender's superego and more a matter of connecting him with the opportunity systems of the community; of integrating him with the socializing and conformity-producing institutions of organized society. Rehabilitation becomes, in part at least, a problem of creating a stake for him in the prevailing social system.

This kind of thinking, Schrag argues, has led to the emergence of the third correctional revolution in which the correctional system is modifying its rehabilitative objective by the addition of the integration or reintegration goal. Whereas the rehabilitative objective might well be sought by the offender's removal to an institution where he would be treated, trained and educated, the integration goal is most logically pursued through programs that keep the offender in or near the mainstream of community activity where his separation and alienation from his nonoffending fellows can be minimized, his commonality with them emphasized, and his integration with them effected.

THE COMMUNITY LOCUS

Correctional administrators and legislative policy-makers may or may not accept the conceptual validity of Schrag's third revolution. Indeed, only a few will confront it. There is, nonetheless, considerable evidence that correctional program development is increasingly predicated upon some such concept. In part, the sheer cost of incarceration has forced a search for alternatives to the institution, and the mushrooming delinquency caseloads

[15] Evelyn S. Guttman, *Effects of Short-Term Psychiatric Treatment on Boys at Two Training Schools,* Report No. 36 (Sacramento: California Youth Authority, Division of Research, December, 1963) and Henry J. Meyer, Edgar F. Borgatta and Wyatt C. Jones, *The Girls at Vocational High* (New York: Russell Sage Foundation, 1965).

[16] Stuart Adams, *Effectiveness of Interview Therapy with Older Youth Authority Wards,* Report No. 20 (Sacramento: California Youth Authority, Division of Research, January, 1961).

that have characterized the large industrial states have outgrown the states' capacity to construct new institution beds. Institution population pressures have combined with a substantially increased availability of demonstration and research funds to produce within the past 15 years more program innovations and experiments than occurred in the preceding half century. Primarily these new and promising efforts have sought to develop treatment and control capabilities that were greater than those of the undermanned and poorly-trained probation staffs, while avoiding the cost and the stigma of conventional institutionalization. Some of the more significant programs are briefly reviewed in the paragraphs that follow.

THE HIGHFIELDS PROGRAM

Perhaps the best known of the pioneering efforts was that launched in New Jersey in 1950 by Lloyd McCorkle and Albert Elias. Known as the Highfields Program (from the old Lindbergh mansion in which it is housed) the project deals with 20 youths who, in the main, are candidates for commitment to the state training school. The program combines maintenance work in an adjacent state hospital during the day with a group counseling program after work. There is little organized program beyond this. A significant measure of responsibility for group behavior rests with the group, and the group indicates its evaluation of a youth's readiness for release. The counseling method is described as "guided group interaction" by its sociologist promulgators, in contradistinction to the "group therapy" of the psychiatrists and clinical psychologists.[17]

The original program served as the prototype for a variety of experiments, with and without variations in format, in Provo, Utah, in the New York State Division for Youth, in the Kentucky Division of Child Welfare, and in the California Youth Authority. Additional programs, for both boys and girls, were launched in New Jersey.

The Utah, Kentucky and California adaptations used a similar program format but omitted the residential feature. The participating youths reside at home and are involved in a combination school, work and counseling program during a five-day week.

Sociologist LaMar Empey provided an evaluation procedure in the Provo, Utah, program. Through the collaboration of the juvenile court, comparison groups were created that measured the subsequent performance of the program participants against other groups (a) assigned to probation, or (b) committed to the state training school. The evaluation indicated minimally superior results as compared to probation, but markedly better results when compared with those committed to the state school.

Robert Weber's summary evaluation of this kind of program, made after a nationwide study of juvenile correctional experiments, is worth noting:

> Group programs in the Highfields tradition were unique in that the group process itself shaped the culture and social system of the total program. The key element seemed to be in the amount of decisionmaking authority permitted by the group, with considerably more authority to decide provided here than in those programs that followed the traditional group therapy pattern.
>
> If one asks a youth in most conventional institutions "How do you get out?" one invariably hears some version of, "Be good. Do what you are told. Behave yourself." If one asks a youth in a group treatment program, "How do you get out?" one hears, "I have to help myself with my problems," or "When my group thinks I have been helped." This implies a basic difference in the social system of the organization, including staff roles and functions. In the large institution the youth perceives getting out in terms of the problem of meeting the institutional need for conformity. In the group treatment program the youth sees getting out in terms of his solution to his own problems, or how that is perceived by other youths in the group.[18]

The New York Division for Youth has developed a three-part program as an alternate

[17] H. Ashley Weeks, *Youthful Offenders at Highfields* (Ann Arbor: University of Michigan Press, 1958) and Albert Elias, Lloyd McCorkle and F. Lovell Bixby, *The Highfield Story* (New York: Henry Holt, 1958).

[18] Robert Weber, *The Juvenile Institution Project,* The National Council on Crime and Delinquency and the Osborne Association (New York), to be published soon.

to incarceration for the youthful offender that provides Highfields-type projects for some, a forestry camp work-education experience for others, and a residential housing program in the cities for still others. The three program forms currently serve 600-plus youths and are projected for expansion. The middle-to-older adolescent youths handled are thus diverted from the institution tracks of both the juvenile and adult penal systems.

While some 75 per cent of the offender population come as the result of court commitment, the balance are referred without commitment by social agencies or by their own initiative. The director of the Youth Division, Milton Luger, reports that efforts by a recently-created research arm to evaluate the program indicate that after 7.5 months of post-release exposure to the community, 13 per cent have been subject to rearrest but only 8 per cent have been reconfined. These rates would appear impressively low compared to the experience of most state training school releasees.

CALIFORNIA'S COMMUNITY TREATMENT PROGRAM

Perhaps the most widely-known attempt to substitute treatment in the community for the conventional institution-parole sequence is the California Youth Authority's Community Treatment Project. This carefully designed and researched experiment randomly assigns juvenile court wards committed from Sacramento and San Joaquin counties to the regular institutions or to the community-based program. Field workers with caseloads of 12 youngsters each offer a carefully-planned treatment effort that is specifically developed to meet the individual youth's needs. A sophisticated behavioral theory that categorizes youngsters in terms of their "maturity" level underlies the program strategy.

A combination of individual and group counseling, parental and family counseling, and hobby and craft activities is undergirded by the facilities of a "center" that provides a meeting place, some recreational programming and tutorial service for the marginal student or for those who have been suspended from school. The comparison of the performance of the "experimental" group with that of the "controls" who have received the normal institution-parole service is impressive. At the end of 15 months of parole exposure in the community, the special project wards had been subject to parole revocation in 28 per cent of the cases as compared to the 52 per cent revocation rate of the control group.[19]

Now in its sixth year, the project has served as a prototype for somewhat varied programs in the Watts area of Los Angeles and in Oakland. In the absence of a formal control group for comparison, the performance of these other community programs has been compared with the statewide violation rates of youths of similar age. The incidence of parole revocation is approximately 16 per cent less in the special program groups.

The data accumulating here offers, perhaps, the best solid evidence of the feasibility and superiority of intensive community-based treatment for the seriously delinquent youth.

A number of states are making increasing use of foster and group homes in lieu of institutionalization for the adjudicated delinquent. Washington, New York, Kentucky, Wisconsin, Minnesota and California are utilizing these and/or the "halfway house" as substitutes for the correctional school. These types of program efforts are certainly not without their problems, and unfortunately rarely incorporate solid evaluative procedures to test or compare their effectiveness. The fact that such programs are usually less expensive, that they provide less risk that the subjects will develop a greater delinquent identification or commitment than he will in the training school, and that they are less stigmatizing than incarceration probably foretells an increasing use.

PERSPECTIVE AND PREDICTION

Throughout the last half century the various demonstration programs that have been mounted in the name of delinquency pre-

[19] Marguerite Q. Warren, *The Community Treatment Project After Five Years* (Sacramento: California Youth Authority, Division of Research, April, 1967).

vention or correction have almost universally lacked the kind of organization or design that would permit valid, objective evaluation. Proof of efficacy was usually in the form of the single case examples of the youngster who had responded to the ministrations of the recreational, religious or casework service offered. Control or comparison groups have typically been unknown, and statistics, when kept, have frequently been manipulated to give the most optimistic interpretation of results.

With this kind of experiential tradition prevailing, the social scientific methodology that could accurately assess the efforts to change behavior patterns has been slow to develop. The vastly increased availability of demonstration-research funds of the past decade has simply not been accompanied by the measurement or assessment know-how that would make possible valid tests of program impact. Program directors, including those with the highest professional qualifications, have frequently been suspicious or resistant to the researcher's efforts to impose the kind of constraints around a program that would permit measurement of its effectiveness. In those programs where research assessment has been provided, the "negative" or "inconclusive" finding has probably been more commonly the outcome than has the clear-cut, positive result. Thus, in the absence of solid social-scientific direction, correctional programs continue to wallow in a wilderness of ignorance where precedent, prejudice and hunch are far more influential in shaping program direction and content than is any body of knowledge concerning what works and what does not.

As the dimensions of the correctional problem have grown at a steadily accelerating pace, it becomes increasingly clear that the nation is poorly equipped to cope with it. Existing correctional agencies are undermanned by overworked and undertrained staff who characteristically provide an undifferentiated kind of surveillance or custody to a widely diverse group of offenders. The violation data available indicates that the community programs (probation) are probably less ineffective than the custody programs of the institutions, but that neither variety has great impact on the offender.

It was, in part, the recognition of this bleak picture that occasioned the creation of the President's Commission on Law Enforcement and Administration of Justice in the summer of 1965. Its 18-month effort to assess the problem, to query the experts and to formulate remedial steps resulted in the submission of a series of bills to Congress that are under consideration as this is written. They represent the first effort to involve the federal government in the control and treatment of the offender in any comprehensive or substantial way. This, in itself, is a significant development.

The commission's multivolume report confronts all aspects of the criminal justice process from the prevention of delinquency through the arrest, prosecution, adjudication, and correction of the offender population. To the extent that this many-faceted study represents the combination of informed opinion and available research data that it sought, and to the extent that its prescriptive formulations are viable and realistic, the recommendations might logically be seen as predictive of the future program developments throughout the country.

It is from this base, then, that the following predictive observations are offered:

PREVENTIVE PROGRAMS

A major, largely federally-financed effort will be beamed primarily at the slum areas of the large cities and will seek to create a multi-service youth development program outside the province of the existing court or correctional agencies. It will seek to divert the lesser offender from the correctional track and allow him to mingle with the non-offending youth in varied recreational-educational programs.

The overcrowded, poorly-housed, inadequately-financed and generally undernourished slum school does not seem to provide equality of educational opportunity, and may contribute more to the causes than the prevention of delinquency. Hopefully, public

opinion will trigger a substantially increased effort to provide the special kind of educational opportunity that the intellectually and socially undernourished slums need.

A growing awareness of the disastrous impact that the disintegrated and fatherless family can have on its rudderless youthful members will lead to increased efforts to improve housing, welfare policies, and family counseling and guidance programs.

The increasing tendency of a complex, mechanized and automated society to postpone the achievement of responsible adulthood while it demands greater education and training of its youthful workers will get increasing recognition. It should result in the provision of more job training and new career development programs both within and without the existing educational establishment. Additional efforts to involve older adolescents in meaningful, participating, service-oriented roles would seem indicated.

Correctional agencies will participate in the effort to divert the unsophisticated and lesser offender into noncorrectional programs to minimize the stigma of the correctional processes and to avoid the youth's development of a delinquent self-image.

The differential tailoring of treatment and control programs to fit the varying needs of different kinds of offenders will be emphasized in both community and institution programs.

Probation programs will require and hopefully will receive a substantial infusion of additional staff that will in turn necessitate vastly expanded training facilities. Federal subsidies will offer significant assistance here.

A growing sophistication in the probation agencies will be buttressed by a variety of program alternatives that offer treatment-control capability somewhere between complete freedom in the community and institutional incarceration.

Group treatment methods in both community and institution programs will enjoy greater use and increasingly will provide for evaluative procedures.

Correctional workers will commit a much larger portion of their time to the opening of doors to opportunities within the community, less to treating the offender as a sick or abnormal person.

The greatly increased number of youths with their increased delinquency proneness will require additional institutional as well as community program capability. However, the institution will change significantly in size, location and program content. Small regional treatment centers located in population centers will offer a combination of diagnostic service and short-term intensive treatment of youth and family with maximum utilization of community resources. Only the more sophisticated and delinquently-oriented will receive longer-term care in conventional institutions.

The expanded correctional apparatus will evoke continuing scrutiny, and administrative reorganization may result in some states and localities. Such reform will seek greater organizational coherence providing continuity and integration of treatment-control responsibility.

Progressive administrators will see program evaluation and effectiveness testing as an essential and ongoing ingredient of sound administration. The search for treatment method improvement will diminish the need, real or imagined, to defend the status quo.

Finally, strengthened information and statistical systems, improved dissemination of research-demonstration results, and widely dispersed program experimentation will contribute to a steadily broadened knowledge base and an increasing commitment to rationality in the planning and development of correctional programs.

A correctional apparatus that, in fact, does correct should slowly emerge.

Howard Ohmart has worked in the field of youth corrections since 1941. He has served as a deputy probation officer and from 1944 to 1961 he was head of the California Youth Authority's Bureau of Paroles. During 1966, he was on the staff of the President's Commission on Law Enforcement and Administration of Justice, as an assistant director of the corrections task force.

To counteract the present "failure" of the American community to deal creatively with criminal rehabilitation, this author says we must have "an awakened public that is informed, involved and inspired in the crusade to make the criminal 'out' a societal 'in'."

The Criminal and the Community

By Gus Tyler
Assistant President, International Ladies' Garment Workers' Union

The community has a far greater role in the process of correction than it knows. The attitude of the community conditions the attitude of the entire correctional system. The funds the community is prepared to commit to correction determine the quantity and the quality of the service. The relationship of the community to the offender affects the return of the outcast to the society. This many-sided give-and-take between the community and the criminal is a basic fact in all cultures. It is especially so in a democratic society where governmental agencies, such as the correctional system, are responsive to the voice of the voter.

Regrettably, the community does not generally realize that it is called upon to involve itself in the correctional system. The ordinary citizen prefers to turn this matter over to the police and penal institutions who are charged with "taking care" of the delinquents in the human family. The caretakers are viewed as a necessary evil, carrying on an unpleasant work of little prestige. Hence, the society pays little heed to the "system," appropriates little money and makes few demands for quality performance.

To the extent that the community has, historically, become involved with the correctional system it has been due to the outcry of sensitive souls who rebelled against the brutalizing impact of an insensitive penal process. The actual process of reform has fallen to a handful of dedicated professionals who have sought to impart a modern philosophy of correction. On either side of this small body of humanitarians and sophisticated technicians stand the great mass of inert citizens and a large legion of uninspired hirelings. The fact that the correctional system has incorporated some of the insights of sociology, psychology and business efficiency into its techniques is a tribute to the persistence and skill of a dedicated cadre. They need the backing of an awakened public that is informed, involved and inspired in the crusade to make the criminal "out" a societal "in." With such community participation our correctional system can become a valuable reservoir of untapped and creative social energy instead of a stagnant swamp that willy-nilly converts once hopeful humans into hopeless pests of the social order.

The failure of our present system is patently revealed in the figures on recidivism—a professional term applied to the repeater who makes entrances and exits into and out of "correction" a way of life. Having been disowned by the society, he disowns the society, building his social order around the jail.

"Records furnish insistent testimony to the fact that these repeated offenders constitute the hard core of the crime problem," reported the President's Commission on Law Enforcement and Administration of Justice in 1967.[1]

[1] *The Challenge of Crime in a Free Society,* (Washington, D.C.: U.S. Government Printing Office, February, 1967), p. 45.

A Massachusetts study showed that 32 per cent of the men who could be followed in a long-range study over 15 years repeatedly committed serious crimes during this period and that additional ones did so on a now and then basis. A California study showed that of parolees released between 1946 and 1949, 43 per cent were reimprisoned by 1952. A summary review of state and federal prison records reveals that about one out of every three released from prison will be back in five years. To this high figure must be added all those who commit crimes without arrest or conviction.

The rate of recidivism is most tragically revealed in the fate of a juvenile offender. In the words of the President's Commission:

> The earlier a juvenile is arrested or brought to court for an offense, the more likely he is to carry on criminal activity into adult life; the more serious the first offense for which a juvenile is arrested, the more likely he is to continue to commit serious crimes, especially in the case of major crimes against property; the more frequently and extensively a juvenile is processed by the police, court, and correctional system the more likely he is to be arrested, charged, convicted and imprisoned as an adult.[2]

Whatever it is that the present system of correction does, it appears that it does little to correct. It may punish; it may remove; but it reforms only a minority—a minority that might very well have reformed itself without the "system."

The basic reason that the correctional system fails is that the community has no clear, consistent and comprehensive philosophy as to how the offender should be treated. The public attitude is a mixture of three levels of behavior: primitive, pragmatic and progressive. The primitive, arising as a "gut" reaction, calls for punishment; the pragmatic, in self-defense, calls for removal of the offender; while the progressive calls for reformation of the offender, the community or both.

In practice, though not in theory, the primitive tends to predominate. There is still the feeling that when an offender is incarcerated, he is not only rendered momentarily harmless but that his punishment will also teach him to behave. The ancient thirst for revenge against the violator of the tribal mores conditions the basic community attitude toward the criminal. Because community attitude is more intestinal than rational, the offender is looked upon as an "outsider," a member of that class of nonpeople, the criminals. As such, he—like most strangers—becomes faceless, treated as a number rather than a name, as a collective noun rather than as an individual soul. Contrary as this primitive behavior is both to our Judeo-Christian ethic and our democratic ethos, it is the unstated premise of our correctional system.

The end result is the high rate of recidivism —or worse. For many, the system of correction becomes the place of corruption, where the soft become tough, where the amateur becomes a professional, and where the accidental becomes permanent.

REQUIREMENTS FOR CHANGE

An overdue revolution in correction requires basic changes in: a) principles; b) practice; c) personnel.

The basic change in principle must assert that the object of correction is to correct. This is only possible if the individual offender is treated as an individual case, in the same way that a doctor treats each patient for his or her specific ailment. To use punishment as a nostrum does not cure the criminal or protect the society.

A second basic principle is community participation in the rehabilitative process, by easing the road back for the offender and by opening opportunities for the returnee. This means more than offering some jobs; it means participation in the rehabilitation, involvement in the "system," use of non-institutional arrangements for offenders, and changes in the community itself to prevent further breeding of criminals.

What do these principles mean in practice?

The first responsibility of the community begins with crime prevention, the structuring of the social order to minimize criminality. Although violators of the law come from every economic and social category in the nation, the statistical evidence continues to

[2] *Ibid.*, p. 46.

prove that the overwhelming percentage of those who are tried and convicted come from lower income groups. Once again, in the words of the President's Commission:

> The common serious crimes that worry people most—murder, forcible rape, robbery, aggravated assault, and burglary—happen most often in the slums of large cities. . . . The offenses, the victims and the offenders are found most frequently in the poorest and most deteriorated and socially disorganized areas of cities. [These areas are characterized by] low income, physical deterioration, dependency, racial and ethnic concentrations, broken homes, working mothers, low levels of education and vocational skill, high unemployment, high proportions of single males, overcrowded and substandard housing, high rates of tuberculosis and infant mortality, low rates of home ownership or single family dwellings, mixed land use, and high population density.[3]

These are the areas that compose the "other America," standing outside the affluent society and hungrily looking in. Denied the delights of economic and social democracy, this "other" and "under" world breeds its marauders who turn to crime to redistribute the wealth, to voice their frustrations and to express the mores of the disinherited, distressed and disturbed.

Crime is a function of economics—but it is also a function of ethics. The proof lies in the vast numbers of slum dwellers who never commit a crime and in the increasing number of affluent suburban dwellers who do commit crimes. "What appears to be happening throughout the country, in the cities and in the suburbs, among the poor and among the well-to-do," reports the President's Commission, "is that parental, and especially paternal authority over young people is becoming weaker." The traditional root of ethical conduct—the home—seems to be rotting, either because it is under- or over-nourished. Whatever the reason, this is a circumstance that cannot be corrected by cops, courts, or confinement. The revitalization of a vigorous ethic is the responsibility of the community, beginning with each in his own community. Crime prevention—like charity—begins at home!

THE PROBLEMS OF DETENTION

A crucial corner of the total social environment with which the community must concern itself is the sad home away from home, the house of detention. It is here that the offender, or the accused, or the stray, is often first expelled from the accepted society and propelled into the world of crime. Because the community lacks facilities to house a variety of souls who are momentarily the charges of the police or the courts—to sort them out and to assign them to the most appropriate surroundings—the "system" dumps them all indiscriminately into a barrel full of rotten apples. "Detention" too often becomes a way of mass producing criminals, especially among juveniles.

In a scathing indictment of detention practices, the special report of the National Council on Crime and Delinquency concludes that

> confusion and misuse pervade detention. It has come to be used by police and probation officers as a disposition; judges use it for punishment, protection, storage, and lack of other facilities. More than in any other phase of the correctional process, the use of detention is colored by rationalization, duplicity, and double-talk, generally unchallenged because the law is either defective or not enforced and because it is always easy to make a case for detaining on the grounds of the child's offenses or demands of the public as interpreted by the police or the press.[4]

Who may be caught up in this detention? A child removed from the home to protect him against his parents; a pregnant girl awaiting placement; a youth with a brain injury; a material witness; a youngster in need of lodging until a foster home is found; a truant; a retarded child waiting for an opening in an institution; an adolescent who is being punished to shock him into good behavior; a gang leader who, at an early age, is a professional.

The haphazard nonsystem of detention leads to overcrowded facilities and to prolonged stays. Under pressure from communities to "do something" and to "do it now" to protect the public from the offender,

[3] *Ibid.*, p. 35.

[4] *Correction in the United States,* A Survey for the President's Commission (New York; NCCD, 1967), p. 35.

judges tend to respond by committing the offending child to the "training school," once called a "reformatory." The result is that the evils of detention are now institutionalized. Into these new surroundings, most appropriate for fairly hardened types, are tossed the motley elements to be found in detention. The offender, who was initiated into the penal world through detention, now begins to learn the more advanced rites of the "other" world in the training school. From the rate of recidivism—one out of two will return—it is not irrelevent to ask "For which world are they being trained?"

In the "school," the juvenile or even adult is not simply exposed to contact with people of bad habits. He is moved into a "society" —the penal society—run by its own ruling class. Within any such institution, there are "governors," risen from the penal "colony," who establish the rules and the rulers. Those to be "ruled" are often the innocents, armed with none of the tough weapons of counteroffense for the general community or for the incarcerated community. In sum, the "school," like a jail or a maximum safety prison, is a structured society governed by the toughest and best organized in the criminal world, indoctrinating inmates in the *weltanschauung* and techniques of the antisocial.

How can the community break through this vicious circle?

Detention must become a selective process. The local jail should not be a dumping ground. The National Council on Crime and Delinquency (NCCD) proposes some major reforms to be handled through bureaus of probation and detention set up in the separate states. These would emphasize case and group work with children and parents; establish standards for both the physical facilities and nature of care in detention; prohibit use of common jails for detaining children; set up a diagnostic service; secure treatment where necessary; develop special foster homes for those who need care outside their own homes.[5]

[5] *Ibid.*, p. 37–38.
[6] *Ibid.*, p. 38.
[7] *Ibid.*, p. 161.

NCCD maintains that if detention were placed on a selective, supervised, and scientific basis—with the necessary facilities and personnel to back it up—

> relatively little juvenile detention will be necessary; where used, it will be the diagnostic door to the most disturbed child's correctional treatment.[6]

CRIMINAL THERAPY

The role played by a sophisticated detention system in handling juveniles can, likewise, be played by a knowledgeable presentencing procedure in the correction of adults. In criminal therapy, this is the equivalent of the patient's history in medical therapy. It allows the judge to know the offender as well as the offense, and thereby to make the cure fit the judged and not just make the punishment fit the crime. "This role," notes the NCCD report,

> has recently been expanded so that information that helps differentiate one offender from another is offered not only at presentence stage but also in other decisional situations—the pre-arraignment, pre-pleading, and pre-trial stages of the court process.[7]

This work is normally turned over to probation agencies which are also charged with the responsibility for surveillance, service and counseling. The probation agency is an active link between the offender and the community. In the event the offender is put in a noninstitutional environment for correction, he is under the eye of probation. In the case of the juvenile offender, probation directs the client to appropriate services that may help him in his problems. The offender, and often the family, need counseling so that they may develop some insight into their unfortunate circumstance and thus be motivated to take steps—both alone and with outside help.

In the NCCD report, it is recommended that probation go beyond these traditional functions, to play a creative role in the community, to open opportunities. "Probation is in the community," it notes,

> and must, therefore, be concerned with the community's conditions and circumstances that foster deviant behavior and with the resources and op-

portunities required by offenders for responsible conduct. For example, it must not ignore the problem of unemployment of youth—disadvantaged youth especially—whose proportion in the labor market is rising. Successful integration of probationers depends to a large measure on employment opportunity; it must be undertaken as a community-wide endeavour, with the probation agency in the forefront of the effort. Seeking jobs for probationers individually is no longer enough to deal with the problem.[8]

Although the basic concept of probation is to use the community as the proper place for rehabilitation, there is a growing interest in specialized environments, in halfway houses that are neither penal institutions nor the open community *per se*. This is especially significant when applied to misdemeanant behavior.

Drunkenness is the most common misdemeanant behavior. Of the 2.5 million misdemeanant offenses in the United States in 1964, reported by the Department of Justice in its *Uniform Crime Reports,* more than 1,400,000 were for drunkenness. In response, a number of innovative programs have been developed for alcoholics, ranging from group therapy and hospital care to the use of special medication.

In the same vein, homeless men are referred to "shelters" or are involved in anti-poverty programs. In Seattle, Washington, the Office of Economic Opportunity recruits ex-probationers as correctional aides, thereby providing meaningful work, extending a useful service, and offering new tools for coping with the misdemeanant. Other communities are using volunteer workers to assist misdemeanants, claiming a "success rate of 94%."[9]

A new kind of head-start program in a number of cities screens the case before criminal proceedings are initiated. The object is to avoid bringing the matter to trial and to substitute a variety of community agencies to solve the individual's problem.

In any such program, there is always the need for public education so that innovation will not be resisted out of fear of the "criminal" elements. Halfway houses are viewed with alarm in many communities, where residents prefer to have offenders—especially ex-convicts and narcotics users—both out of sight and out of mind.

All these are approaches to maximize the offender's continuing relations with the community on the principle that the ultimate purpose of correction is to make the offender or potential offender an "inner" rather than an "outer." The same kind of innovative approaches are required for the convict who is institutionalized. For that reason, many institutions have been giving increased attention to vocational and academic training, to the counseling of inmates, and to bridges with the community.

Job training has been spurred by the increasing realization that job openings are not meaningful to men without job skills. This is especially true in a society that demands fewer common laborers and more people with education and specialized training. An added spur for such training is the recent availability of funds for a variety of manpower training programs.

Inmate counseling serves to prepare the individual to relate to himself and to the community. Whereas this was originally a highly formalized relationship—like a patient with his analyst—the current trend is to put the counseling on a more informal basis, right in the cell block or dormitory. To reach out to as many as possible in this way, the one-time specialist trains other workers in the institution to carry on the service.

Finally, the community can play a major

(*Continued on page 115*)

[8] *Ibid.*, p. 181.
[9] *Ibid.*, p. 130.

In addition to his duties as assistant president of the I.L.G.W.U., **Gus Tyler** is the director of the union's departments of politics, education and training. A frequent contributor to professional and popular journals, Mr. Tyler has also written several books, and recently edited *Organized Crime in America* (Ann Arbor: University of Michigan Press, 1962). He was the special editor of the May, 1963, issue of *The Annals* of The American Academy of Political and Social Science, which was devoted to a study of organized crime.

"From whatever standpoint one approaches the matter, . . . it seems clear that the proponents of federal regulation of criminal procedures would be stepping into a most tangled constitutional thicket," comments this observer.

The Federal Role in Criminal Investigation Procedures

By Allan S. Nanes
Legislative Reference Service, Library of Congress

Whether or not it is a proper function of Congress to establish uniform regulations for the control of criminal investigation procedures is a subject that is fraught with constitutional problems. In broad outlines, the constitutional controversy begins with the fact that what are known as police powers—that is, the ordinary powers of government over health, safety, welfare, convenience and morals—rested originally with the states, under the reserved powers clause of the tenth amendment. This meant that the states had jurisdiction over matters such as education, civil and criminal law, land tenure, marriage and divorce, local government, relief of the poor, commerce within the state, inheritance and several others. But whatever the original intention of the framers, the Supreme Court has permitted a tremendous growth in the powers of the federal government, through the implied powers doctrine, through a broad interpretation of the power to regulate interstate commerce, through the general welfare clause of the preamble, and through the taxing power.

In any event, the character of American federalism has undergone tremendous changes in the past 200 years. Many people feel that the balance between the states and federal government has been destroyed and that the federal government has entirely too much power today. Others believe that a broad judicial interpretation has been necessary to make the Constitution sufficiently elastic to serve as our fundamental instrument of government in the dynamic, changing society that has typified the United States.

It is well to remember that federalism is a halfway house between strong centralization and a loose confederation. Wherever it is used as a technique of government, it has to be adapted to the conditions existing at a particular time and place. At best, the balance between central and local powers probably never satisfies everyone.

From whatever standpoint one approaches the matter, it seems clear that the proponents of federal regulation of criminal procedures would be stepping into a most tangled constitutional thicket. Certainly the argument that Congress has no constitutional warrant for action in this field has much to commend it. However, since Congress has not acted, and the Supreme Court has not ruled, it might be premature to assert that congressional action in this field would be sure to suffer the veto of the court.

One area in which federal standards have been applied to the states has been that of civil liberties. In a number of cases, the Supreme Court has held that the guarantees of due process of law contained in the fifth amendment cover the equal protection clause

of the fourteenth amendment,[1] so that, for example, if the states, on a purely state level, deny a Negro such equal protection, he is still guaranteed that right, as a United States citizen, through the due process clause of the fifth amendment.

Some see in cases of this type a precedent for federal requirements relating to uniform investigating procedures. Yet the court has not yet chosen to apply all the guarantees of the fifth amendment to the states. Thus many constitutional lawyers and judges are of the opinion that the court has been inconsistent and selective in stating which rights safeguarded against federal infringement under the fifth amendment are also protected against restrictive action by the states. Followers of this school of thought argue that it is wiser to preserve the tradition of autonomy of the states in the exercise of powers concerning the lives, liberty, and property of citizens—in which category power relating to criminal investigation would seem to fall.

Another body of opinion, while not denying the constitutional problems that a federal code of uniform criminal investigation procedures would raise, nevertheless points out that the federal and state systems of law enforcement have been in contact since the dawn of our national history. This school asserts that both the states and the federal government now display greater activity in the field of criminal investigation than used to be the case, and what is sometimes incorrectly interpreted as an increase in federal powers, relative to the states, is simply more activity at both levels.

Insofar as the national government is concerned, this greater activity is not solely the product of the courts. Congress has had a hand in it too. Laws such as the Mann Act, the Lindbergh law, making kidnapping a federal offense, and others, which were the products of congressional action, brought federal power and federal personnel into the area of "routine law enforcement."[2] Besides congressional action, cooperative programs have developed between both levels in the law enforcement process. The FBI conducts a training program for state and local police officers, as does the Treasury's Narcotics Bureau.[3] Federal fingerprint files and other aids to scientific investigation are available to state law enforcement agencies. What all this adds up to is a system of cooperative federalism, which transcends the formal barriers between state and federal law enforcement activities. The school of thought which emphasizes this aspect of the problem would probably be less disturbed by any congressional attempt to legislate a code of federal investigative procedures applicable to the states, than would those who feel that justice would be better served by preserving a more independent role for the latter.

One disadvantage of a federal code of criminal procedure or investigation is that it would tend to limit state experimentation and flexibility. (There is a counter argument that presently it is state procedures that tend to be frozen, and the federal government that displays the greater willingness to try new methods to cope with important social problems.) A uniform federal code of criminal investigation procedures which might foreclose the possibility of any state acting as a laboratory would find considerable opinion arrayed against it.

CONGRESSIONAL AUTHORITY

Be that as it may, the crucial barrier for protagonists of uniform criminal investigation procedures to hurdle remains the constitutional one. What power of Congress might be employed to justify the enactment of such legislation?

One that comes quickly to mind is the commerce power. The power of Congress over interstate commerce has been used to regulate labor relations, and to establish federal wage and hour standards, and these laws have been upheld by the Supreme Court. According to Mr. Justice Stone in *U. S.* v. *Darby,* which upheld the constitutionality of the Fair Labor Standards Act,

[1] Cortez A. M. Ewing, *American National Government* (New York: American Book Company, 1958), p. 96.
[2] Francis A. Allen, "The Supreme Court, Federalism, and State Systems of Criminal Justice," 8 *De Paul Law Review,* p. 214.
[3] *Ibid.*

> it is conceded that the power of Congress to prohibit transportation in interstate commerce includes . . . stolen articles . . . kidnapped persons . . . and articles such as intoxicating liquor or convict-made goods, traffic in which is forbidden or restricted by laws of the state of destination.[4]

Switchblade knives now fall under this interdiction.

Congress also has the power to tax for the general welfare, a power on which the entire social security system is based. Its power to draw up postal regulations vests the federal government with power to prevent the use of the mails to send obscene matter, for example, or to defraud.

Since the exercise of these powers involves the federal government in the protection of the people's health or safety, it is sometimes said that the federal government, like the states, possesses a "police power." But whether this federal "police power" could be legitimately extended to cover the actual enforcement of criminal law against local offenders seems a somewhat doubtful proposition.

To the untutored layman, it might seem that the commerce clause could be invoked against organized crime, which in many of its manifestations constitutes a burden on interstate commerce, or that, as the guardian of the general welfare, Congress could legislate in this field.

But these are generalized principles, stated in a loose fashion, and it is far from certain that a connection could be made between these powers of Congress and a uniform code of criminal investigative procedure that would be applicable to the states, and that could withstand constitutional attack. It is one thing to exercise national power in the broad national interest of protecting the economic wellbeing of all the people. It may be another thing to attempt to exercise national power in one of the most basic areas of government, which has been traditionally reserved for the states under our system, even though there is a national interest in protecting millions of our people from the depredations of crime. It can even be said that a national code of investigative procedures is more relevant to protecting the rights of the accused than it is to protecting the public from the criminal.

In any event, it is difficult to imagine Congress voting for federal regulations that would supersede those of the states in an area that has traditionally been a state preserve, particularly when substantial doubts can be raised about the constitutionality of any such measure. It goes without saying that the political battle on any such legislation would be on the bitter side, and might leave scars that would be slow to heal. Nor would the enactment of such a code always bring ready compliance on the part of the states. The slow pace of school desegregation might be instructive in this regard. A substantial federal establishment might be needed simply to hold the states to federally prescribed procedures. Even if the states were to be consulted in the formulation of any such code, and assuming that a great majority of them consented to the idea, which seems a far-fetched assumption, the constitutional hurdle would still remain.

CONSTITUTIONAL AMENDMENT?

This would seem to point to a constitutional amendment as the way to accomplish this objective. But the problem here is obvious. Under the Constitution any amendment requires the ratification of three-fourths of the states. The usual agency for such ratification is the state legislatures. It is difficult to envisage the ratification of any such amendment without a long and exhausting struggle, if indeed, it could be ratified at all. The legislatures in a number of states might well view such an amendment as an unwarranted federal incursion into state jurisdiction. The South would be likely to present a united front against it; many Rocky Mountain states would probably react similarly; and a number of legislatures in the populous and urbanized states might also agree. In order to pass an amendment of this type, the state legislatures would have to be convinced that it was designed to help in fighting crime. At a time when the social

[4] 312 U.S. 100.

fabric is undergoing considerable strain, emphasis on the need for uniform safeguards of the rights of accused individuals might find tougher going.

COOPERATIVE ACTIVITY

Apparently, an expansion of the cooperative activity between the federal government and the states is more likely. Nor should such cooperative programs necessarily diminish the role of the states. The FBI training program for police officers has already been mentioned. In addition, there is a program providing for research, training, and demonstration projects under the Law Enforcement Assistance Act, passed by Congress in 1965. This program could be substantially increased.

Federal help could be particularly useful in the field of research. For example, the federal government might support a city program investigating the efficiency of police patrolling methods, or techniques of riot control. Federal funds, or state funds made up by a system of federal grants to the states, could help fill an acknowledged gap in experimentation and evaluation of techniques, a gap that most cities, with their financial difficulties, find it impossible to close.

The federal government could also help by furnishing a centralized pool of information on wanted criminals and stolen property, and fingerprint files, although certain potential dangers might inhere in such a procedure from the standpoint of civil liberties. The FBI is already developing a National Crime Information Center to keep records of this type. The federal government might also stimulate and perhaps underwrite a program whereby local jurisdictions could pool some of their resources and services. Resultant savings might eliminate the need for further federal assistance.

There is a well-developed technique of federal-state relations known as the grant-in-aid, whereby the federal government makes funds available to the states for the execution of specific programs. Normally the federal government lays down the guidelines under which these programs operate, since the funds originate with it. This type of technique might be adapted to programs of research, training and education which the federal government might sponsor in the field of law enforcement.

Federal assistance might also be made available to a program of scientific research and development, so that modern technology could play an even greater role in the investigation of crime and the system of criminal justice generally. Systems analysis, the technique so widely used in the solution of a broad variety of problems, particularly in the field of national defense, might be applied to the subject of criminal investigation and law enforcement. Whatever programs might be undertaken by cooperative federal-state, or even federal-local action (and only a few have been suggested herein)[5], it is not suggested that, as a normal rule, the federal government undertake to support the day-to-day operating expenses of local police departments.

The federal government and state and local governments are already doing a great deal to alleviate those conditions which breed crime. In addition, there are many programs which attempt to nip delinquency in the bud. Despite the huge outlays for crime prevention, however, the problem is apparently not yet under control. Until it is, the mechanisms of criminal investigation and law enforcement need continuous study and reevaluation. Indeed, that need would be present even if crime did not present the major problem that it does. As part of this assessment, an inquiry into the ways and means by which the federal government can help the states and local jurisdictions cope with what is acknowledged by all shades of political opinion to be a national problem, is surely worth pursuing.

(*Continued on page 116*)

[5] The Report of the President's Commission on Law Enforcement and Administration of Justice recommends a great many more specific programs.

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(Continued on page 117)

In the Matter of Gault

On May 15, 1967, the United States Supreme Court handed down a landmark decision regarding court trials of juvenile delinquents. The Court held, 8 to 1, that the constitutional protections of the Bill of Rights apply not only to trials of adults but also to those of juveniles—that juvenile court proceedings are criminal trials and therefore must be conducted under procedures meeting the standards of due process of law. Excerpts from this decision and from the dissent follow:

On Monday, June 8, 1964, at about 10 A.M., Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. Gerald was then still subject to a six months' probation order which had been entered on February 25, 1964, as a result of his having been in the company of another boy who had stolen a wallet from a lady's purse. The police action on June 8 was taken as the result of a verbal complaint by a neighbor of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks. It will suffice for purposes of this opinion to say that the remarks or questions put to her were of the irritatingly offensive, adolescent, sex variety.

The judge committed Gerald as a juvenile delinquent to the state industrial school "for the period of his minority unless sooner discharged by due process of law." Gerald was 15.

It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the substance of normal due process. As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the states to abandon or displace any of the substantive benefits of the juvenile process.

Ultimately . . . we confront the reality of that portion of the juvenile court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an industrial school. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement. His world becomes "a building with white-washed walls, regimented routine and institutional law."

Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.

In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court.

Appellants allege that the Arizona juvenile code is unconstitutional or alternatively that the proceedings before the juvenile court were constitutionally defective because of failure to provide adequate notice of the hearings.

We cannot agree . . . that adequate notice was given in this case. Notice, to comply with due process requirements, must be given

sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity."

The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, is as arresting officer and witness against the child. Nor can the judge represent the child.

The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and prepare and submit it.

We conclude that the due process clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the Fifth Amendment, applicable to the states by operation of the Fourteenth Amendment, is unequivocal and without exception.

With respect to juveniles, both common observation and expert opinion emphasize that the "distrust of confessions made in certain situations" is imperative in the case of children from an early age through adolescence.

We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some difference in technique—but not in principle—depending upon the age of the child and the presence and competence of parents.

STEWART DISSENT

The Court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the nation restrictions that the Constitution made applicable to adversary criminal trials. I believe the Court's decision is wholly unsound as a matter of constitutional law, and sadly unwise as a matter of judicial policy.

Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act.

In the last 70 years many dedicated men and women have devoted their professional lives to the enlightened task of bringing us out of the dark world of Charles Dickens in meeting our responsibilities to the child in our Society. The result has been the creation in this century of a system of juvenile and family courts in each of the 50 states. There can be no denying that in many areas the performance of these agencies has fallen disappointingly short of the hopes and dreams of [those] courageous pioneers.

The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the restrictions of a conventional criminal trial.

A state in all its dealing must, of course, accord every person due process of law. And due process may require that some of the same restrictions which the Constitution has placed upon criminal trials must be imposed upon juvenile proceedings.

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U.S. COURTS

(*Continued from page 69*)

a finding of guilt beyond a reasonable doubt appears unsubstantial will a reviewing court upset a trial court judgment on the merits of a case. On the other hand, errors in admitting or rejecting evidence at the trial, failures to give proper charges as requested to the jury, and the giving of erroneous charges frequently result in reversals.

The most significant change in the role of appellate courts has been their increasing concern since the 1930's with several factors affecting the quality and fairness of the criminal trial. The United States Supreme Court has led the way, with some state courts accepting their lead, and in some instances, going beyond the Supreme Court's standards, while the great majority of the state courts have followed the Supreme Court's lead reluctantly and, in many cases, have expressed their views that the highest court was going too far.[13]

Defendants who are poor, young, inexperienced, or members of racial minorities have been the outstanding beneficiaries of Supreme Court decisions, but in a real sense all defendants, whatever their status, have received greater protection as the Court has insisted that rights that have always existed in theory now must be extended in practice. Indigents must have appointed counsel, at least in serious cases; all defendants enjoy assistance of counsel before sustained interrogation takes place; counsel and free transcripts are provided indigents for appeal; coercive interrogation is outlawed; in short, police, prosecutors and trial courts must avoid any act that might prevent a fair judicial hearing for the accused.

Critics of these decisions, and they are many, insist that restrictions on police interrogation, and limits of searches and seizures, wiretapping and other practices, added to defendant's right to counsel soon after detention, will make it difficult if not impossible to convict the guilty in certain types of cases. Four members of the President's Commission concluded that recent court decisions had created an "imbalance" favoring the accused.[14]

The majority rejected this view and expressed the conviction that the causes of crime and problems of meeting them were extremely complex and of great magnitude. And although some reforms in the administration of justice were proposed, the Commission concluded that the nation "must resist those who point to scapegoats . . . and must recognize that the government of a free society is obliged to act not only effectively but fairly." The agencies of government who have been entrusted with the duty of ensuring "fairness" or justice in the administration of our criminal law are the courts. Whatever specific reform in their organization and procedure may be required, nothing should be done to weaken their concern and capacity for achieving justice for all.

[13] See David Fellman, *The Defendant's Rights* (New York: Rinehart & Co., 1958); Paulsen and Kadish, *op. cit.*, Part IV, and Lockhart, Kamisar, Choper, *op. cit.*

[14] *Report of President's Commission* (1967), pp. 303–308.

CITIZEN ON TRIAL

(*Continued from page 81*)

vated forms of coercion commanded a high priority and alone appeared feasible. In this regard, the pessimistic views, some 36 years ago, of Harvard Law School's Zechariah Chafee, coauthor of the famous report to the Wickersham Commission on "the third degree,"[20] are instructive:

> It is hard enough to prevent policemen from using physical violence on suspects; it would be far harder to prevent them from asking a few questions. We had better get rid of the rubber hose and twenty-four hour grillings before we undertake to compel or persuade the police to give up questioning altogether.[21]

New advances in constitutional-criminal procedure have rarely suffered from a short-

[20] *Ibid.*, p. 26.

[21] Zechariah Chafee, "Remedies for the Third Degree," *The Atlantic Monthly*, November, 1931, pp. 621, 630.

age of absolutely thunderstruck commentators. *Miranda* is no exception. To a large extent this is so because here, as elsewhere, there has been a wide gap between the principles to which we aspire and the practices we actually employ. The officially prescribed norms—what Professor Packer calls the Due Process Model—view the criminal process as limited by and subordinate to the maintenance of the dignity and autonomy of the individual. But the real-world criminal process, what Packer calls the "assembly line" Crime Control model, sees the "efficient" disposition of criminal suspects as the central value to be served and tends to be far more administrative and managerial than it does adversary and judicial.[22]

PRIZE FOR INGENUITY

In theory or principle, there is nothing really startling or inventive about the new confession ruling. The prize for ingenuity, I think it may fairly be said, goes not to the Supreme Court for finally applying the privilege against self-incrimination and the right to counsel to the police station but rather to those who managed to devise rationales for excluding these rights from the stationhouse all these many years.[23]

It may be that we cannot really do in this area of the law what we have done with respect to school segregation and legislative malapportionment, namely take our ideals down from the walls where we have kept them framed "to be pointed at with pride on ceremonial occasions," and instead "put flesh and blood" on them."[24] But this task must be left to *Miranda's* hope for a more enlightened posterity.

[22] See Packer, *op. cit.*, pp. 1–68, and the same writer's "The Courts, the Police and the Rest of Us," *Journal of Criminal Law, Criminology and Police Science*, Vol. 57 (1966), p. 239.

[23] The point is elaborated in this author's "A Dissent from the *Miranda* Dissents: Some Comments on the 'New' Fifth Amendment and the Old 'Voluntariness' Test," *Michigan Law Review*, Vol. 65, (1966), pp. 64–76.

[24] The quoted language is taken from the remarks of Justice Walter Schaefer of the Illinois Supreme Court, in "Symposium on Poverty, Equality and the Administration of Criminal Justice," *Kentucky Law Journal*, Vol. 54 (1966), pp. 521, 524.

THE CRIMINAL AND THE COMMUNITY

(*Continued from page 106*)

part in breaking up what the NCCD report calls "the abysmal isolation of the correctional institution." Listed among the kinds of community groups that carry on this work are Alcoholics Anonymous, Narcotics Anonymous, the Jaycees, the Bad Check Associates, Synanon, Opportunities, Inc., community theaters, athletic clubs. These groups are avenues through which the community can permeate the prison wall, starting the convict on the early road back.

All of the aforementioned are but a few of the ways that an awakened and aroused community can use its voice and its presence to correct correction. They are but a selection of proposals contained in the historic report of the National Council on Crime and Delinquency to which this essay has repeatedly referred. Its standards for correctional institutions run to 16 pages. Its recommendations for immediate reform run into the dozens. This essay is, at best, but a synopsis of and footnote to this monumental document, which has been reinforced by the findings and recommendations of the President's Commission report.

THE OBSTACLE OF COST

Between all these positive proposals and their realization there stand two obstacles. We referred to the first in our opening comments on the public attitude. The second is cost.

To streamline the correctional system and move it into the last quarter of the twentieth century requires proper personnel. Present personnel is overworked, undertrained, undifferentiated and underpaid. It makes little difference as to what sector of the personnel we refer, whether it is a probation officer, a jailer, a social worker, a psychiatrist, a counselor, or a maximum security guard. The work load is totally unrealistic and allows the responsible officer only enough time to go through the motions of relating to an offen-

der, convict or parolee. The job definitions are gross, making demands on the same person for a variety of special skills, each one of which would demand considerable training and supervision. The educational requirements are far below what is needed for sophisticated application of modern insights and techniques. Because the pay scale is so low it is unable to attract people with the needed educational background or specialized schooling.

To develop a proper personnel for the correctional system will demand greater expenditures; to develop proper facilities will require still greater expenditures. But against the cost of cure must be weighed the current costs of the prolonged malady. The total levy assessed by crime against society is beyond measurement, for after the economic costs are totaled, there still remain the huge losses in wasted manpower, in social decay, in violence. Much of our present system is devoted to handling the same people over and over again, unwittingly creating a hard core of criminals who overload the police, the courts and the penal system. It is against these mountainous social costs, that the community must measure its expenditures to create a modern system of correction.

What is called for, then, is a larger societal input in correction to get a greater social output. The total sum is only the first step. Budgeting of that expenditure in well-thought-out ways is the second step. Taken together, the end cost may be less than America pays today for crime in our culture.

CAPITAL PUNISHMENT

(*Continued from page 87*)

decades showed this: six committed another murder, nine others committed a crime of personal violence or some other felony.[16] This is not, to be sure, a perfect record. Yet it does show that public confidence in parole boards, release procedures, and programs of rehabilitation, however faulty they may be in fact, is not misplaced.

[16] Bedau, *op. cit.* p. 399.

Retentionists, if they are to be consistent, must argue that it is better for a thousand murderers to be executed (even though they can be safely released) than for the lives of half a dozen innocent persons to be sacrificed. Abolitionists find this unacceptable.

CONCLUSION

The argument against capital punishment and in favor of abolition is by no means conclusively established. Not only capital punishment but all criminal justice is liable to the complaint that it is riddled with inequities. It seems a moral certainty, furthermore, that sometimes at least the death penalty must have served to deter crime where life imprisonment would have failed. Nor can anyone claim, finally, that life imprisonment (which, of course, does not mean "life" at all) offers complete protection to society. Yet the trends in public opinion, the views of government spokesmen, the unmistakable decline in executions and the piecemeal abolition of death penalties across the nation—all these are clear signs that whatever the facts and the consequences, the death penalty is now in the twilight of its historical role as a mode of social defense against crime in America.

CRIMINAL INVESTIGATION

(*Continued from page 110*)

Many individuals, disturbed over the continuing inroads of crime, would probably welcome the idea of the strong hand of the federal government in setting up uniform procedures, in the belief that this would enhance the efficiency of law enforcement. Others, viewing the matter primarily from the perspective of civil liberties, may feel that uniform federal regulations would result in greater security for the accused person against arbitrary or abusive police action. Constitutional and political considerations make an outright extension of federal authority in this field impractical. Still, the federal system has survived by adaptation. The problem of crime on a national scale is furnishing a new test of that adaptability.

PRISONS & PRISON REFORM

(*Continued from page 93*)

must focus on the objective of managing as much of the prison caseload in the community as possible, reserving for the prisons only those offenders whose problems are such that they cannot expect to survive in the community as citizens without special preparations in the total institution.

Seen in this light, prison reform is no longer a question of ending the barbarous abuses of the past. The savagery of former years has given way to the business-like processes of maintaining a routine. What prison reform must now accomplish is the task of requiring the prison official to manage his institution dynamically. Throughout public administration in America today there has arrived a consciousness that public money must be spent to achieve public objectives. Dynamic management requires the administrator of the prison to determine what a prison is really for and to see to it that the proper objectives are accomplished. Through research and through trial and error, correctional administrators will find the proper uses of incarceration in the continuity of correctional services. It is highly improbable that we will soon discontinue the practice of locking up offenders. It is highly probable that we do not need to lock up so many.

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N.S.H.

IN THE MATTER OF GAULT

(*Continued from page 113*)

For example, I suppose that all would agree that a brutally coerced confession could not constitutionally be considered in a juvenile court hearing. But it surely does not follow that the testimonial privilege against self-incrimination is applicable in all juvenile proceedings.

In any event, there is no reason to deal with issues such as these in the present case. The Supreme Court of Arizona found that the parents of Gerald Gault "knew of their right to counsel, to subpoena and cross examine witnesses. . . ."

And as Mr. Justice White correctly points out, no issue of compulsory self-incrimination is presented by this case.

I would dismiss the appeal.

THE MONTH IN REVIEW

A CURRENT HISTORY Chronology covering the most important events of June, 1967, to provide a day-by-day summary of world affairs.

INTERNATIONAL

European Economic Community (Common Market)

June 5—Jean Rey, a Belgian, is named to fill the chief administrative post of the European Communities—the E.E.C., the coal and steel pool and the atomic energy pool. On July 1, the 3 executive bodies of the communities will be merged.

June 19—At Versailles, British Prime Minister Harold Wilson confers with French President Charles de Gaulle on British entry into the Common Market.

June 26—The Council of Ministers of the E.E.C. argues for 4 hours about the procedure to be followed in processing the British application for Common Market membership.

General Agreement on Tariffs and Trade

June 30—Representatives of 46 nations sign the tariff concessions agreed on at the Kennedy round of trade negotiations. (See *Intl, General Agreement on Tariffs and Trade, Current History,* July, 1967, p. 53.)

Middle East Crisis

(See also *Israel, Jordan,* and *U.A.R.*)

June 2—British Prime Minister Harold Wilson meets at the White House with U. S. President Lyndon B. Johnson. Later, Wilson tells reporters that unless the Gulf of Aqaba is opened for ships carrying cargoes to the Israeli port of Elath, "a very, very dangerous situation" will prevail. On May 22, 1967, the Egyptians announced a blockade of Israeli ships in the Gulf of Aqaba. (See *Intl, Middle East Crisis, Current History,* July, 1967, pp. 53 *ff.*)

The Israeli army reports that an Israeli patrol intercepted 4 Syrian commandoes in Israeli territory; 2 Israelis and 1 Syrian are killed.

June 3—In a note to Soviet Premier Aleksei N. Kosygin, Israeli Premier Levi Eshkol appeals for Soviet assistance in easing the present crisis.

June 5—Fighting between Arabs and Israelis breaks out at the Sinai peninsula on Egyptian soil and in Jerusalem. In early morning surprise attacks, Israel destroys the Egyptian, Syrian and Jordanian air forces. Israeli Defense Minister Moshe Dayan, in a radio message to the armed forces, declares that Israel has "no aim of territorial conquest."

The Security Council recesses after an unsuccessful 12-hour effort to draft a cease-fire resolution in the Arab-Israeli war.

June 6—After a 36-hour battle, Israelis take over the Jordanian sector of Jerusalem.

Iraq and Kuwait announce that they are cutting off oil supplies to the U.S. and Britain.

The U.A.R. closes the Suez canal to all shipping. Diplomatic relations with the U.S. are broken because of U.A.R. charges that British and U.S. planes are assisting Israel.

The U.S. sends a note to the U.A.R. embassy in Washington rejecting as "wholly false" the U.A.R. charges.

At the U.N., the Security Council unanimously adopts a resolution calling for a cease-fire by Israel and the Arab states.

June 7—In Jerusalem, Israeli soldiers seize the Old City, and take Mt. Scopus.

Israel captures Bethlehem in Jordan. Israeli forces also claim victory over the Sinai Peninsula (U.A.R. territory situated between Israel's Negev Desert and the Suez

Canal). Israel reports that it has taken Sharm el Sheik and has broken the blockade of the Gulf of Aqaba.

Israelis capture the Gaza strip.

The Security Council unanimously adopts a Soviet resolution calling for an immediate cease-fire in the Middle East. Israel announces that it will accept the cease-fire order if its enemies do.

June 8—Israeli planes attack a U.S. naval vessel in the Mediterranean. It is reported that 10 Americans are dead and 100 wounded. Israel apologizes to the U.S. for the error.

The U.A.R. announces that it accepts the U.N.'s cease-fire order provided Israel accepts it also. Syria announces her compliance.

A Soviet freighter headed for the Jordanian port of Aqaba passes through the Strait of Tiran, the first ship to do so since Israel declared the gulf an international waterway yesterday.

June 9—Israeli forces invade Syria, charging a Syrian violation of the cease-fire along the northern frontier.

According to The Associated Press, Israeli troops have taken the east bank of the Suez Canal and now control completely the Sinai Peninsula. The Jordanian government declares that Jordan has lost 15,000 persons in the war against Israel.

The Security Council unanimously asks Israel and Syria to halt hostilities.

June 10—U.N. Secretary General U Thant declares that Syria and Israel have accepted arrangements for a cease-fire made by the U.N. Yesterday the Security Council called on Israel and Syria to stop fighting.

Israeli Information Minister Yisrael Gailille declares that Israel's victory over the Arabs has liquidated previous armistice agreements; Israel will not "return to the *status quo*."

Tass (Soviet press agency) publishes a statement by Communist leaders of 7 East European states and the U.S.S.R., pledging assistance to the Arab world if Israel refuses to withdraw from territory conquered. The statement was drawn up at a secret meeting yesterday in Moscow.

The Soviet Union breaks diplomatic ties with Israel and threatens sanctions if Israel violates the cease-fire.

Israeli sources report that in less than 30 hours Israel has scored a major victory over Syria, penetrating 12 miles into Syria at the deepest point. At 6:30 P.M. Israeli time, the cease-fire becomes effective on the third front of this 6-day war.

June 11—The chairman of the U.A.R.'s Suez Canal Authority, Mashour Ahmed Mashour, reports that the Suez Canal was blocked on June 9 by Israeli air raids that sank several vessels.

At a meeting with U.N. military personnel, Israel and Syria sign a cease-fire agreement.

June 12—In a policy speech to the *Knesset* (parliament), Premier Eshkol declares that Israel will not give up all the land she has occupied: "The land of Israel shall no longer be a no man's land, wide open to acts of sabotage and murder." Israeli territorial gains include the entire Sinai Peninsula from the east bank of the Suez Canal to the Gaza strip; Jordanian territory on the western bank of the River Jordan and the Old City of Jerusalem; and the southwestern corner of Syria.

At the U.N., Arab spokesmen reject Premier Eshkol's proposal for bilateral peace negotiations outside the U.N.

June 13—In a letter to U Thant, the Soviet Union requests an immediate emergency session of the General Assembly to effect "the immediate withdrawal of Israeli forces behind the armistice lines."

June 14—The Security Council defeats a Soviet draft resolution condemning Israeli aggression and demanding the withdrawal of Israeli troops from occupied territory.

The Security Council approves a resolution calling on Israel to "facilitate the return" of Arab refugees who [have] fled from Israeli-occupied territory in Jordan, Syria and the Gaza strip.

June 16—Soviet Premier Aleksei N. Kosygin, en route to a special emergency session

of the U.N. General Assembly convened at Russia's request, stops in Paris to confer with French President Charles de Gaulle for 2 hours and 15 minutes.

In Cairo, President Nasser meets with visiting President Nureddin el-Attassi of Syria.

June 17—In Kuwait, the foreign ministers of 13 Arab states open talks on the removal of Israeli forces from territories seized.

It is reported that the Soviet Union has sent approximately 100 MIG planes to the U.A.R. to help replace those it has lost.

June 19—Speaking to a nation-wide television audience shortly before the opening of the U.N. General Assembly, President Johnson sets forth 5 principles for establishing peace and stability in the Middle East: the right of each country to national life; justice for Arab refugees; the right of innocent maritime passage; limitation of the arms build-up; and a guarantee of territorial integrity for all Middle Eastern states.

Premier Aleksei N. Kosygin addresses the special emergency session of the General Assembly. He proposes a draft resolution calling for condemnation of Israel as an aggressor; the withdrawal of all Israeli troops from Arab territory; and Israeli compensation to Syria, Jordan and the U.A.R. for war damages.

June 20—Addressing the General Assembly, the U.S. representative, Arthur J. Goldberg, presents a draft resolution incorporating a 5-point Middle East peace plan (based on President Johnson's 5 principles) to be arranged during negotiations with the help of a third party (reportedly the U.N.).

June 21—Speaking before the General Assembly, British Foreign Secretary George Brown urges that a special envoy of "unchallenged" standing be sent to the Middle East to advise the U.N. on future peacekeeping operations there.

June 22—French Foreign Minister Maurice Couve de Murville tells the U.N. General Assembly that Israel must withdraw its troops from occupied Arab territory; thus France joins other U.N. delegations calling for removal of Israeli forces from conquered land.

June 23—On the campus of Glassboro State College in Glassboro, New Jersey, President Johnson and Premier Kosygin confer for 5.5 hours about the Middle East crisis, arms control and the Vietnam war. The 2 leaders announce that they will meet again on Sunday, June 25.

June 25—Premier Kosygin and President Johnson confer at Glassboro State College again for over 4 hours. Later, at the White House, in a brief televised report on the talks, President Johnson declares that "no agreement is readily in sight on the Middle Eastern crisis and that our well-known differences over Vietnam continue." At a televised news conference after returning to New York, Premier Kosygin reiterates that Israeli troop withdrawal to positions behind the 1949 armistice lines is the first step toward creating peace in the Middle East.

June 27—The *Knesset* passes a law enabling the interior minister to declare Jerusalem a single city under Israeli administration.

June 28—The Israeli interior minister, Moshe Shapiro, proclaims the unification of Jerusalem, including the Jordanian sector; Jews and Arabs will be able to move freely within the city. Jerusalem's Mayor, Teddy Kollek, declares that Arabs will be able to travel freely throughout Israel.

In Washington, President Johnson and King Hussein confer.

A U.S. State Department statement declares that Israel's absorption of the Jordanian sector of Jerusalem "cannot be regarded as determining the future of the holy places or the status of Jerusalem in relation to them." An earlier White House statement asserted that the U.S. did not recognize as valid Israel's unification of Jerusalem.

June 29—In a news conference, Israeli Foreign Minister Abba Eban refuses to confirm that Israel has annexed the Jordanian sector of Jerusalem.

June 30—*The New York Times* reports that King Hussein of Jordan, in an interview after talks with President Johnson, says he is hopeful that we can "equip our armed forces from the free world."

United Nations

(See also *Intl, Middle East Crisis*)

June 13—The General Assembly elects an acting commissioner and 11-member council to administer South-West Africa.

The fifth special session of the Assembly, called April 21, 1967, closes.

June 19—The Security Council unanimously agrees to extend for another 6 months, until December 26, 1967, the mandate of the U.N. peace-keeping force in Cyprus.

War in Vietnam

June 1—It is reported that U.S. forces in Vietnam suffered 2,929 combat casualties last week, the highest weekly total to date.

June 10—U.S. planes bomb the North Vietnamese electric power plant 1.1 miles from the center of Hanoi.

June 13—U.S. planes bomb railway lines linking Hanoi and Communist China.

June 24—A U.S. military spokesman announces that 76 U.S. paratroopers were killed last week in an ambush in the Central Highlands by what is believed to have been a North Vietnamese battalion.

BOLIVIA

June 24—In the Oruro tin-mining district, army troops occupy the mines to head off an attack by miners on an army engineer battalion constructing a highway.

BURMA

June 27—The government imposes a 7-day dusk-to-dawn curfew following anti-Chinese demonstrations.

June 28—The chairman of Burma's Revolutionary Council, General Ne Win, imposes martial law in parts of Rangoon. It is reported that a member of the Chinese Communist Embassy staff has been stabbed to death. It is disclosed that on June 26, Chinese students provoked anti-Chinese feelings; they began to hold Burmese teachers as hostages, to wear Mao Tse-tung badges despite a government prohibition, and to beat up newsmen.

CAMBODIA

June 13—Prince Norodom Sihanouk, chief of state, announces that Cambodia and North Vietnam will establish diplomatic relations. Sihanouk asserts that North Vietnam and the National Liberation Front (the Vietcong political organization in South Vietnam) have recognized Cambodia's present frontiers.

CHINA, PEOPLE'S REPUBLIC OF (Communist)

June 2—In Peking, wall posters disclose that fighting has occurred in Inner Mongolia, Sinkiang and Honan between anti-Maoists and Maoists.

June 13—China orders the expulsion of 2 Indian diplomats who have been found guilty of espionage, in a trial *in absentia* before 15,000 people in a sports arena.

June 14—In a wild demonstration at the airport, hundreds of Red Guards attack the 2 departing Indian diplomats.

June 17—*Hsinhua* (official Communist Chinese press agency) reports that China has "successfully exploded her first hydrogen bomb, over the western region of the country."

The U.S. Atomic Energy Commission confirms that Communist China has exploded a "nuclear device" and announces that the blast was equal to several million tons of TNT.

June 25—In Peking, *Hsinhua* charges that, in his talks with U.S. President Johnson, Soviet Premier Kosygin "is actually getting near the conclusion of a vicious deal" that will be aimed against China.

June 26—The U.S. Defense Department announces that an unarmed U.S. Air Force F-4 Phantom jet was shot down by Chinese aircraft when it flew over Chinese air space near or over Hainan Island. The 2 crew members are rescued from the South China Sea by a U.S. navy helicopter.

CONGO, REPUBLIC OF THE (Kinshasa)

June 24—President Joseph D. Mobutu announces that Congolese currency has been devalued by about two-thirds; a new currency system will be introduced.

CUBA

June 26—Soviet Premier Kosygin arrives in Cuba for talks with Premier Fidel Castro.

June 30—Kosygin and Castro end 4 days of secret talks. Kosygin departs.

FRANCE

(See also *Intl, E.E.C., Middle East Crisis*)

June 16—Overriding a Senate veto, the National Assembly approves, on the third reading, the bill giving the government special powers to enact economic and social legislation by decree.

June 27—Turkish President Cevdet Sunay arrives for a 4-day state visit.

GHANA

June 30—The ruling military and police junta, led by Lieutenant General Joseph A. Ankrah, names 14 civilian special commissioners to sit with the junta in an enlarged "cabinet." General Ankrah will in effect become president.

INDIA

June 24—The U.S. and India sign an agreement in New Delhi whereby India will receive 1.5 million tons of food grains.

ISRAEL

(See also *Intl, Middle East Crisis*)

June 1—In a cabinet shuffle, Major General Moshe Dayan, hero of the 1956 Sinai campaign, is named Israeli defense minister. Israeli Premier Levi Eshkol formerly held the defense portfolio.

JORDAN

(See also *Intl, Middle East Crisis*)

June 26—King Hussein addresses the U.N. General Assembly, and appeals for a "peace with justice" for the Middle East.

KOREA, REPUBLIC OF (South)

June 12—Demonstrations are held to protest the June 8 elections for a new assembly. It is alleged by the opposition New Democratic Party that the balloting was fixed.

June 15—President Chung Hee Park concedes that irregularities disgraced the June 8 elections. Nonetheless, he refuses to call new elections.

June 19—Some 5,000 persons riot and demonstrate in the downtown area of Seoul to protest the rigging of the June 8 elections. Official election returns give the ruling Democratic Republican Party over 120 of the 175 seats in the National Assembly.

LIBYA

June 15—Premier Hussein Mazigh announces that Britain and the U.S. have been asked to evacuate their bases and withdraw their troops as soon as possible.

MALAWI

May 8—President H. Kamuzu Banda meets in Washington with U.S. President Johnson.

NIGERIA

June 1—Major General Yakubu Gowon announces that a Federal Executive Council has been formed.

Gowon orders the Niger Bridge, the last link between Biafra (the secessionist Eastern Region) and the rest of Nigeria, to be closed. Yesterday, the Bight of Biafra and all other coastal waters of the Eastern Region were declared off limits to all ships.

June 12—Gowon adds 11 leading civilians to the Federal Executive Council. The Federal Executive Council is to take over some of the duties of the ruling Military Council. Gowon declares that he is anxious to restore full civilian rule to Nigeria.

PANAMA

June 26—Negotiators for the U.S. and Panama reach agreement on new treaties for regulating the Panama Canal: under the new arrangements, the U.S. will yield its 64-year-old control of the Panama

Canal to a U.S.-Panamanian authority; Panama's sovereignty over the 10-mile-wide canal strip will be recognized.

RHODESIA

June 22—Representing the United Kingdom, Lord Alport arrives in Rhodesia for talks on settling differences between Rhodesia and Britain. (See also *United Kingdom.*)

June 27—Lord Alport confers with Prime Minister Ian D. Smith.

RUMANIA

(See *U.S., Foreign Policy*)

SPAIN

(See also *United Kingdom, British Territories, Gibraltar*)

June 26—Spanish Protestants, Jews and other religious minorities become free to worship publicly for the first time in Spain's modern history, as the *Cortes* (parliament) approves the Law of the Exercise of the Civil Right to Religious Freedom.

SYRIA

(See *Intl, Middle East Crisis*)

THAILAND

(See *U.S., Foreign Policy*)

UGANDA

June 22—It is reported that President Milton Obote has decreed the abolition of the kingdom of Buganda. The decree is contained in a set of constitutional proposals made public today establishing Uganda as a republic.

U.S.S.R., THE

(See also *Intl, Middle East Crisis*)

June 2—In a note to the U.S., the Soviet Union protests that U.S. planes today have bombed the *Turkestan,* a Soviet merchant ship, in a North Vietnamese port, Campha.

June 5—The Soviet government, in a note, refuses to accept a U.S. denial that its planes attacked the *Turkestan.* (See also *U.S., Foreign Policy.*)

June 20—Soviet Chief of State Nikolai V. Podgorny flies to Cairo to confer with Nasser. He stops en route in Yugoslavia to talk with President Tito. (See also *Yugoslavia.*)

June 24—During a recess in talks with U.S. President Johnson, Premier Aleksei N. Kosygin spends a day visiting Niagara Falls (N.Y.) and the Robert Moses Niagara Power Plant.

June 25—In a 25,000-word document released today, the Communist Party of the Soviet Union reviews its policies and programs during the past 50 years and reaffirms the goal of a communist society.

June 30—In a note charging that U.S. planes attacked a Soviet merchant ship in a North Vietnamese port yesterday, the Soviet Union protests to the U.S.

UNITED ARAB REPUBLIC

(See also *Intl, Middle East Crisis;* and *Yemen*)

June 9—Following Israel's victory over Arab forces, U.A.R. President Gamal Abdel Nasser announces that he will resign as president. In his televised resignation broadcast, Nasser assumes the "entire responsibility" for Egypt's defeat. Later, the National Assembly votes to reject Nasser's resignation.

June 10—Nasser declares that he will remain in office "in view of the people's determination to refuse my resignation." The Cairo radio announces that the Egyptian National Assembly has unanimously given Nasser power to "rebuild the country politically and militarily."

June 11—After 11 senior Egyptian commanders resign or retire, Nasser appoints a new military commander and a new air force chief.

June 19—President Nasser names himself premier, appoints a 28-man cabinet and takes control of the Arab Socialist Union, Egypt's only party.

June 21—Soviet President Podgorny arrives in Cairo. (See also *U.S.S.R.*)

UNITED KINGDOM, THE

(See also *Intl, Middle East Crisis*)

June 13—Prime Minister Harold Wilson tells

the House of Commons that Lord Alport will go to Rhodesia in a few days to talk with Prime Minister Ian D. Smith. Wilson declares that Rhodesia's independent government is "an illegal regime in a treasonable situation."

In the House of Commons, Wilson declares that the British government will not replace the Polaris with the Poseidon missile. The U.S. designed the Poseidon as an improvement over the Polaris. (See *United Kingdom, Current History,* July, 1967, p. 59.)

British Territories

Anguilla

June 16—Peter Adams, spokesman for Anguilla Island in the Caribbean, declares its independence from Britain and asks the U.S. to make it a territory with status similar to that of the Virgin Islands. On May 30, Anguilla seceded from the St. Kitts-Nevis-Anguilla Federation.

Gibraltar

June 5—Britain and Spain open discussions on Spanish air restrictions near Gibraltar.

June 9—British-Spanish talks on Gibraltar break down.

June 15—The minister of state for Commonwealth affairs, Mrs. Judith Hart, tells the British House of Commons that a plebiscite will be held in September, 1967, to permit the people of Gibraltar to determine whether they will retain their association with the U.K. or join with Spain.

Hong Kong

June 23—Police clash with leftist union members. One person is shot and killed.

June 24—In Peking, at a dinner given by visiting President Kenneth Kaunda of Zambia, Communist Chinese Premier Chou En-lai warns that if the British continue to persecute the Chinese in Hong Kong, they will be responsible for the consequences.

June 29—Communist China suspends shipments of fresh food to Hong Kong. A Peking radio broadcast discloses that the Communist Chinese government has protested to Britain over an alleged violation of its airspace by a military plane from Hong Kong.

South Arabia, Federation of

June 5—Following an outbreak in which a retired British officer and 8 Arabs were killed, British officials place parts of Aden under curfew.

June 19—British Foreign Secretary George Brown tells the House of Commons that the government will keep a military force near the Federation after it becomes independent in 1968.

June 20—South Arabian troops mutiny in Aden, reportedly to protest the disciplinary suspension of 4 Arab colonels. At least 18 Britons and 2 Arab policemen are killed.

British troops withdraw from the Crater region of Aden (where Arab nationalists have been in control) and seal off the district.

June 21—Four Arab nationalists are killed by British troops who are fighting Arab terrorism. Arab terrorist activity is directed against British plans to transfer power in January, 1968, to the Federal Government of South Arabia, allegedly dominated by ultraconservative elements.

UNITED STATES, THE

Agriculture

June 23—Secretary of Agriculture Orville L. Freeman announces that the national wheat acreage allotment—under which complying farmers are eligible for federal benefits—has been cut by 13 per cent for next year.

Civil Rights

June 2—At a district welfare department building, a sit-in by a group of Negro women, who call themselves "Mothers for Adequate Welfare," snowballs into a riot in the Negro ghetto of the Roxbury district of Boston.

June 3—It is reported that calm has been restored to the Roxbury section after a

riot last night in which 1,700 policemen tried to subdue over 1,000 rioters.

It is reported that last night in Tampa, Florida, rioting erupted in Negro residential areas after a suspected Negro burglar was shot and killed by a policeman.

June 13—In Cincinnati, Ohio, National Guardsmen are called in by city police to help subdue rioting teenagers and young adults in Negro neighborhoods.

In Tampa, Florida, National Guardsmen, who moved into a rioting Negro district to disrupt rock-throwing teenagers, withdraw after Negro leaders promise to restore peace.

June 14—Cincinnati experiences another night of racial tension.

June 16—In a letter to chapters of the National Association for the Advancement of Colored People, Executive Director Roy Wilkins urges chapter officials to prevent riots by positive action.

June 19—In Washington, D.C., a federal judge rules that *de facto* segregation of poor Negro children in the District of Columbia public schools as a result of housing patterns is as unconstitutional as segregation required by law. He orders specific steps to end segregation by the fall of 1967.

After a speech by Stokely Carmichael, formerly head of the Student Nonviolent Coordinating Committee, in Atlanta, Georgia, rock-throwing Negroes are dispersed by police.

June 20—In Atlanta, Georgia, one Negro is killed and 3 other persons are injured during a racial clash between police and residents of Atlanta's West Side.

June 23—A militant Negro organization, FIGHT (an acronym for Freedom, Integration, God, Honor — Today), and the Eastman Kodak Co. of Rochester, N.Y., reach agreement on a program to help unskilled Negroes find jobs and to offer them job training.

June 24—James H. Meredith, the Negro who desegregated the University of Mississippi, resumes his Mississippi "freedom march," cut off in the summer of 1966 when he was shot and wounded while he was marching.

June 28—In Buffalo, New York, 1,000 Negro youths riot in the Negro ghetto; at least 4 persons have been shot.

Foreign Policy

(See also *Intl, Middle East Crisis*)

June 3—Speaking in New York City to the State Democratic Committee, President Lyndon B. Johnson declares that he is "determined" to maintain peace in the Middle East and "to preserve the territorial integrity of nations involved in the area."

In reply to a Soviet protest charging that U.S. planes bombed a Soviet ship in North Vietnam yesterday, the U.S. State Department asserts that any damage suffered by the vessel was "the result of antiaircraft fire directed at American aircraft." (See also *U.S.S.R.*)

June 7—Following a meeting of the National Security Council, President Johnson pledges to help find a lasting peace for the Middle East. He announces the creation of a special subcommittee of the National Security Council, to be headed by McGeorge Bundy (president of the Ford Foundation), to study requirements for a permanent peace.

June 18—At Camp David, Maryland, President Johnson meets with Australian Prime Minister Harold Holt.

The Defense Department concedes that U.S. planes may have bombed the Soviet ship *Turkestan* on June 2 in Campha, a North Vietnamese port.

June 20—White House Press Secretary George Christian discloses that President Johnson has in effect invited Kosygin to meet with him in Washington, D.C., "at Camp David or some other convenient place nearby. . . ."

June 26—President Johnson receives Premier Gheorghe Maurer of Rumania, the first Communist head of government ever welcomed to the White House.

June 27—Johnson announces that the U.S. will provide $5 million for emergency relief for victims of the Israeli-Arab war.

In Washington, Johnson confers with

visiting President Phumiphol Aduldet of Thailand.

June 29—President Johnson approves the final result of the Kennedy round of tariff-cutting trade negotiations; he authorizes the U.S. to sign the agreement in Geneva. The government discloses that tariff reductions of up to 50 per cent on thousands of imported items will take place gradually in 5 annual steps beginning January 1, 1968.

Government

June 1—President Johnson sends Congress a plan to give residents of the District of Columbia eventual self-government, starting with a representative type of city government.

Sargent Shriver, head of the Office of Economic Opportunity, announces allocation of $6.5 million in grants for neighborhood health centers.

June 7—According to *The New York Times,* President Johnson has approved a plan to make each cabinet member responsible for communication with 4 or 5 states, in an effort to promote better communication between state governments and the White House.

June 8—The Senate completes congressional action on a $238-million measure extending federal aid for community health centers for 3 years.

The Senate confirms the nomination of Corey T. Oliver as assistant secretary of state for Latin American affairs. William J. Porter's appointment as ambassador to South Korea is also confirmed.

June 10—Deputy Secretary of Defense Cyrus R. Vance resigns. The White House discloses that Secretary of the Navy Paul H. Nitze will be nominated to succeed Vance.

J. Cordell Moore, assistant secretary of the interior, declares an oil emergency because of the disruption in oil shipments due to the Middle East war.

June 12—A report by a special group assigned to study pollution by Secretary of Health, Education and Welfare John W. Gardner recommends that the federal government spend $2.5 billion during the next 5 years to alleviate the effects of man's pollution of his environment.

June 14—President Johnson accepts the resignation of a White House special assistant, Robert E. Kintner.

June 15—Secretary of the Department of Housing and Urban Development Robert C. Weaver announces that Raymond H. Lapin has been named president of the Federal National Mortgage Association (known as "Fanny May").

June 17—In a study group report made public by the President's Commission on Law Enforcement and Administration of Justice, 2 consultants note that juvenile delinquency is increasing and charge that public school inadequacies "contribute to heightened delinquency."

June 20—The House of Representatives completes congressional action on a compromise draft extension bill to continue military conscription for 4 years. Full-time undergraduate students with satisfactory grades will be guaranteed student deferments until age 24. The bill does not authorize drafting 19-year-olds by drawing names in a national lottery, but permits the President to draft 19-year-olds first.

June 22—Overriding Justice Department objections, the Federal Communications Commission reaffirms, 4 to 3, its approval of the merger of the American Broadcasting Companies, Inc., and the International Telephone and Telegraph Corporation.

June 23—Voting 92 to 5, the Senate censures Senator Thomas J. Dodd (D.-Conn.) for using campaign and testimonial funds "for his personal benefit." On the second charge against Dodd, that of seeking double reimbursement for air travel fares from the Senate and private organizations, the Senate exonerates him, 51 to 45.

June 24—The President's Crime Commission issues its final report, "Crime and Its Impact—An Assessment."

June 27—President Johnson appoints Clifford L. Alexander, Jr., a Negro, to serve as the chairman of the Equal Employment Opportunity Commission.

The President addresses 5,000 members of the Jaycees (formerly known as the Junior Chambers of Commerce). Detailing the advantages of life in the United States today, the President receives a tremendous ovation.

June 29—In a section of Philadelphia, Pennsylvania, torn by riots 3 years ago, President Johnson arrives unexpectedly to visit with Negroes in a job-training program at the Philadelphia Opportunities Industrialization Center. At the center, Johnson signs the $1.2 billion aid to education bill extending the Teacher Corps for 3 years.

June 30—President Johnson signs the bill to extend the military draft for 4 years; he also signs an executive order granting standby authority to Secretary of Defense Robert McNamara to draft 19-year-olds first.

Johnson signs the bill to increase the permanent ceiling on the national debt to $358 billion effective July 1, 1967, and the temporary debt ceiling to $365 billion for fiscal year 1969.

Labor

June 14—The operators of nearly two-thirds of the U.S. merchant fleet strike and tie up U.S.-flag ships in Atlantic and Gulf ports. The deck officers (operators) are under a 4-year contract, signed in 1965, that prohibits a strike.

June 18—The strike deadline set by the 6 shopcraft unions against the nation's railroads passes. Rail union leaders have told their members that they will delay a strike because the President's anti-strike bill, which they oppose, has to be worked out by a House-Senate conference.

June 19—In federal district court, the International Organization of Masters, Mates and Pilots is ordered to return to work tomorrow. The federal court order also remands the dispute to arbitration.

June 20—The deck officers return to work.

June 26—Ruling in favor of the deck officers' union, the arbitrator, Professor Walter Gellhorn of Columbia University Law School, declares that the traditional contract relationship between licensed deck officers and other unions should be maintained. The deck officers are entitled to wage parity with other seagoing unions. The award brings the deck officers' base wage rate up to that of the marine engineers.

Military

June 2—At a news conference, Deputy Defense Secretary Cyrus R. Vance makes public a plan worked out by the Joint Chiefs of Staff for reorganizing the Army's Reserve and National Guard forces: the plan calls for the replacement of 15 low-priority National Guard divisions by brigades that will be maintained in nearly the same geographical areas.

Captain Howard B. Levy, an army doctor who refused to teach Green Beret medics how to treat skin diseases, is found guilty by a general court-martial of disobedience, culpable negligence and promoting disloyalty.

June 20—Cassius Clay, deposed heavyweight champion, is convicted in a federal district court in Houston, Texas, of violating the Selective Service Act by refusing induction into the armed forces.

June 22—Secretary of Defense Robert S. McNamara declares all segregated housing near the Andrews Air Force Base in Maryland off limits, in the first attempt to enforce off-base desegregation by military fiat.

Politics

June 23—In Los Angeles, California, President Johnson addresses guests at a Democratic fund-raising dinner. He asserts that earlier today in Glassboro, New Jersey, Kosygin agreed with him on the desirability of establishing "a world peace for our grandchildren."

Supreme Court

June 5—Ruling 6 to 3, the Supreme Court holds that property owners may refuse entry into their homes or businesses to health

and fire inspectors unless they have search warrants.

June 12—The Supreme Court rules 5 to 4 that the United Automobile Workers Union may fine union members who crossed picket lines during strikes in 1959 and 1962 at 2 Allis-Chalmers Manufacturing Company plants.

In a unanimous opinion, the Supreme Court decides that Virginia state laws outlawing marriage between whites and nonwhites are unconstitutional.

Ruling 5 to 4, the Supreme Court declares unconstitutional a New York state law permitting police to hide microphones on the private property of criminal suspects for purposes of eavesdropping, even though they have obtained judicial warrants.

The Supreme Court, in a 5-4 decision, upholds the contempt-of-court convictions of Martin Luther King, Jr. and 7 other Negro ministers who violated an Alabama court order by leading protest marches in Birmingham in 1963. The 8 men will have to pay fines of $50 each and be jailed for 5 days.

In 2 cases—*Curtis Publishing Co. v. Butts* and *The Associated Press v. Walker*—the Supreme Court agrees that the First Amendment protection of freedom of the press against libel suits covers not only suits brought by public officials but also those brought by public figures. The Supreme Court thus reverses the libel judgment won by Major General Edwin A. Walker, right-wing activist. However, because of press carelessness, the award granted to Wallace Butts, former athletic director of the University of Georgia, is upheld.

Justice Tom C. Clark retires from the Supreme Court as the 1966–1967 term closes.

June 13—Thurgood Marshall, Solicitor General of the U.S., is appointed to the Supreme Court; if confirmed by the Senate, he will be the first Negro Supreme Court Justice.

VATICAN, THE

June 23—Pope Paul VI issues an encyclical supporting the celibacy rule for Roman Catholic priests.

VIETNAM, REPUBLIC OF (South)

(See also *Intl, War in Vietnam*)

June 29—*The New York Times* reports that the ruling military junta has met to try to resolve the conflict between the chief of state, Lieutenant General Nguyen Van Thieu, and Premier Nguyen Cao Ky, rival candidates in the presidential election scheduled for September 3, 1967. It is rumored that the generals gave Ky a vote of no confidence.

June 30—Premier Ky withdraws as a presidential candidate; he agrees to run for the vice-presidency on the same ticket with Nguyen Van Thieu.

YEMEN

June 1—The Mecca radio reports that Yemeni Royalists have disclosed that earlier in the week U.A.R. planes dropped 50 gas bombs on Yemeni villages.

June 2—The International Committee of the Red Cross announces that a Red Cross medical team has found "various indications pointing to the use of poison gas bombs" in Yemen.

YUGOSLAVIA

June 22—It is reported that yesterday a Soviet military mission arrived in Belgrade to confer with Yugoslav military leaders.

June 24—Soviet President Nikolai V. Podgorny, returning home from a 3-day conference in the U.A.R., stops in Yugoslavia again to talk with President Tito. (See also *U.S.S.R.*, June 20.)

ERRATUM: We regret that on page 327 of our June, 1967, issue, an editorial error appeared in "Organized Crime in the United States." The sentence that begins on line 7, right column, should read, "In the 19th Century the Civil War produced the James boys, . . . and others."